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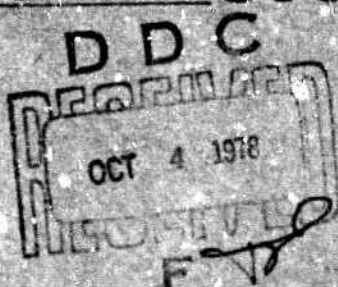
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RESERVE COMPENSATION SYSTEM STUDY



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SUPPORTING PAPERS
Volume II

DEFERRED COMPENSATION AND BENEFITS

June 1978

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VOLUME II.

DEFERRED COMPENSATION AND BENEFITS.

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PREFACE

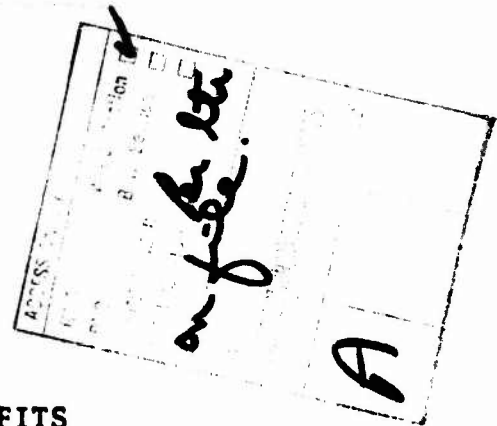
The Secretary of Defense was notified by the Director, Office of Management and Budget (OMB) on 14 April 1976, of the Presidential requirement for a study on the compensation of the Reserve Forces. The Reserve Compensation System Study (RCSS) was staffed by October with a balance of civilian personnel, regular military personnel, and reservists brought to active duty. An Interim Report was published and delivered to OMB on 1 December 1976 and the Final Report was submitted on 30 June 1978.

Although the Study Group had the benefit of the recently published works of the Defense Manpower Commission and the Third Quadrennial Study of Military Compensation, these efforts focused only on active duty issues. The RCSS has been the most comprehensive study ever undertaken of reserve compensation. Therefore, the Study Group had to gain an understanding of the underlying rationale for the introduction and successive modification of each compensation element or benefit of the Active Forces and how and when it was extended to the Guard/Reserve. This was accomplished primarily through research papers that tracked legislation from its introduction (sometimes as far back as 1792), through the subcommittee hearings, congressional debates, to passage, and subsequent amendment through the years. Still other analysts studied existing compensation arrangements of other countries with volunteer forces. Simultaneously, other analysts examined active and reserve manpower strengths in detail (by age, grade, skill, and other variables) to determine how and in what ways existing personnel policies, compensation practices, and manpower management activities were affecting reserve effectiveness -- either positively or negatively.

Using data gathered by the various methods, the analysts developed Study positions through the technique of decision briefings, background papers, computer modeling, and issue papers. These papers have been assembled and arranged in three supporting volumes. The intent has been to capture in each supporting volume those relevant data on reserve compensation that would be useful to military and civilian executives of the Federal Government, as well as to staff specialists in manpower, personnel, and compensation.

The tables of contents for each of the supporting volumes and for the Final Report are repeated at the end of each volume for the convenience of the reader.

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18 August 1977

RETAINER/RETIRED PAY (1713 - 1916)

Legislative Authority. 10 USC 3914 (Army); 10 USC
8925 (Air Force); 10 USC 6330 (Navy)

Background. As far back as 1713, the record shows
that the British Navy wanted its officers to be more
than "fair-weather officers". They wanted their
officers to make naval service a career so they pro-
vided a half-pay stipend during peacetime:

half-pay was the State's acknowledgement
that he was its servant all the time,
and that, therefore, it had the ines-
capable duty of looking after him even
when not actively employing him.¹
(emphasis added)

Early in the 19th century the United States Congress
was more interested in building the young Navy and
separating it from its British roots. However, it
did not take long for the U.S. Navy to recognize
the need to keep available knowledgeable personnel
for use when required. A provision was passed in
1835 that allowed officers to be placed on fur-
lough or leave-of-absence pay at the discretion of the

Secretary of Navy.² (Leave-of-absence pay was a three-fourths of the regular salary; waiting orders was two-thirds of the salary; and, furlough was half pay.³)

Because of no retirement provision Navy officers tended to stay in the service as long as alive causing it to grow "top-heavy"⁴; and, younger officers became stagnant. The Act of February 1855 solved these two problems by adapting the principle provisions of the British retainer pay concept -- pay and subject to recall. The Act stated:

that all officers who shall be found by the said board incapable of performing the duties of their respective offices, ranks, or grades, shall, if such finding be approved by the President, be dropped from the rolls or placed in the order of their rank and seniority at the time, upon a list in the Navy Register, to be entitled the reserved list, and those so placed on the reserved list shall receive the leave-of-absence pay or the furlough pay to which they may be entitled when so placed, according to the report of the board and approval of the President, and shall be ineligible to further promotion, but shall be subject to the orders of the Navy Department at all times for duty.⁵
(emphasis added)

The Act of August 1861 provided for a retired list and established the pay of officers on the retired list.⁶

The length of service required for retirement was clarified in December 1861:

That whenever the name of any naval officer now in the service or who may hereafter be in the service of the United States shall have been borne on the Naval Register forty-five years, or shall be of the age of sixty-two years, he shall be retired from active service and his name entered on the retired list of officers of the grade to which he belonged at the time of such retirement.⁷ (Emphasis added)

In 1899 the Navy extended retirement to enlisted personnel, providing retirement after 30 years of military service (and at least 50 years of age), on application to the President.⁸

The 1908 Act authorized voluntary retirement after 30 years to Naval officers.⁹

For the Army in 1861, an officer could retire after 40 years (upon application to the President) and receive:

Pay proper (base pay) of the highest rank held at the time of retirement and four rations a day.....¹⁰

In 1870 a bill was passed allowing for voluntary retirement (at discretion of the President) after 30 years for Army and Marine Corps officers. It also stated:

no retired officer of the Army shall hereafter be assigned to duty of any kind or be entitled to receive more than the pay and allowances provided by law for retired officers of his grade.....¹¹

Mandatory retirement at age 64 for officers of all branches was introduced in 1882.¹²

In 1885, retirement was used as an incentive to ensure that Army enlisted men remained in the service and would not desert, as illustrated by this quote:

The annual desertions from our Army are between three and four thousand, and any measure that would lessen this number might well be considered an economical one; but beyond the question of economy stands that of justice. For it is no more than just that the soldier who has given all the best years of his life to the military service of the country should have some provision made for his old age beside the present Soldiers' Home, where he is separated from his family.

It is the opinion of the Lieutenant-General of the Army that thirty years would be the proper period of service to authorize the retirement of a private or a non-commissioned officer. The passage of this bill would not entail much expense for the Government, because there are in the Army only fifty enlisted men who have served thirty years. ¹³
(emphasis added)

In a Court of Claims Case of 1903 it was debated as to whether a retired Army enlisted man had the right to collect longevity increases equal to those of active duty personnel:

How, then, can it be seriously contended that men on the retired list, who had no duties to perform at home or abroad and whose services were not contemplated by the act (1898) or otherwise authorized by law, are entitled to such increase?¹⁴

It was also brought out that retirees actually, "retire from and not into the Army".¹⁵

The Act of 1907 made the 30 year voluntary retirement for the enlisted personnel standard for all branches of the services.¹⁶

The National Defense Act of 1916 brought no drastic changes in retirement for the Army. On the other-hand, the 1916 Appropriations Act for the Navy created the Fleet Naval Reserve causing the Secretary to say that the provisions of the Act are:

all necessary if we are to have an adequate reserve force, and are based somewhat on the British system which is very liberal in respect to retainer pay, bounties, and uniform gratuities.¹⁷

✓ In summary, from inception the Navy desired and designed a retirement system to retain qualified personnel by using the technique of recall by the Secretary of Navy; conversely, the Army concept was to retire personnel for their many years in the active force as a just reward for services rendered today. These two concepts remain intact.

Λ

REFERENCES

- 1 The History of the British Navy by Michael Lewis
- 2 Cong Record and Appendix, 47th Cong., 1st Sess, 1882, p 6675, vol xiii, part vii
- 3 Cong Record containing the Proceedings and Debates of the 48th Cong, 2nd sess, vol xvi 1885, p 1368
- 4 Ibid ref 2
- 5 Ibid ref 2
- 6 12 Stat 290, sec 21 and 22, 1861; PL 37 - Ch 42
- 7 12 Stat 329, 1861; PL 37 - Ch 1,2,3
- 8 30 Stat 1007, 1899; PL 55 - Ch 413
- 9 35 Stat 501, 1908; PL 60-167
- 10 12 Stat 289, sec 15 and 16, 1861; PL 37 - Ch 42
- 11 16 Stat 315; 321, 1870; PL 41 - Ch 294
- 12 22 Stat 118, 1882; PL 47 - Ch 254
- 13 Ibid ref 2, pg 17333
- 14 Murphy vs U.S., 38 Ct Cls 522, 1903
- 15 Ibid ref 14
- 16 34 Stat 1217, 1907; PL 59-174
- 17 Letter from Secretary of the Navy, Josephus Daniels to Chairman, Committee on Naval Affairs, H.R., Hon. L.P. Padgett, January 13, 1916 (National Archives number 28550-13)

RCSS
Legislative History

14 April 1977

RETAINER PAY (1916 - PRESENT)

Legislative Authority. 10 USC Section 6330 and 6331

Purpose. To determine the legislative history of retainer pay.

Background

A series of legislative acts have enabled enlisted members of the Navy and the Marine Corps to receive retainer pay, a form of retired pay, for active military service that will be the focus of this paper. Among the early pieces of major legislation on retired pay was the Act of March 3, 1899.¹ It permitted enlisted Navy personnel (provided they were at least fifty years of age) the opportunity to apply to the President for retirement after completing thirty years of active Navy service.² Upon approval the enlisted member was placed on the Navy retired list and received three-fourths of his final pay and allowances each month. Further, the Act provided that an enlisted member's active service in either the Civil War or the Spanish American War would count double.

The law was altered in June 22, 1906³ to permit service in any military branch to be credited toward the thirty-year total. Since most of the enlisted members received rations and quarters in kind, a March 2, 1907 law⁴ was passed to establish an imputed monthly value of \$9.50 for rations and \$6.25 for quarters. This permitted retired personnel to compute the allowance portion of retired pay.

In establishing the Naval Reserve Force⁵ on August 29, 1916, the Congress authorized retainer pay for all enlisted members of the Naval Reserve Force components with the exception of the Volunteer Naval Reserve. Upon initial enrollment in a temporary rank or rating in the Naval Reserve Force, each member was authorized \$12 annually as retainer pay until such time as a rank or rating could be confirmed.⁶ Thereafter, retainer pay was based on a particular rank or rating. For example, Fleet Naval Reserve men having less than eight years' service received \$50 yearly; those between eight and twelve years received \$72; and those with twelve or more years' service were paid \$100 annually.

Members of the Naval Reserve Force were composed of citizens who obligated themselves by serving in America's Naval Forces during wartime or a national emergency declared by the President. Congress was very explicit on the purpose of compensating members of the Naval Reserve Force. After enumerating the rates of compensation, the law stated that "such pay (is) to be considered as retainer pay for the obligation on the part of such members to serve in the Navy in time of war or national emergency."⁷

It was Congress' intent to create a force of men in peacetime which could train for the eventualities of war. The regular Naval establishment was small; however, the Navy Department and the Congress saw the need for rapid expansion during wartime or other crises. The events taking place on the European continent after 1914 very likely served as a stimulus and incentive for the Navy to prepare. America's entry into war was only a matter of several months away.

The 1916 law permitted those members of the Naval Reserve Force who re-enrolled for an additional four years of service to receive an increase of twenty-five percent of their base retainer pay. In addition, those reserve members, who completed twenty years of satisfactory service in the Naval Reserve Force were eligible to apply for retirement at their existing rank or rating. Such persons were to receive annually, in lieu of any retired pay, a "cash gratuity" equaling the total sum of their retainer pay received during the last period of enrollment -- normally, a four-year period.

Enlisted members were eligible to apply to the Fleet Naval Reserve upon completion of sixteen or twenty years of active Naval service.⁸ These persons were eligible to receive retainer pay at the rate of one-third and one-half, respectively for sixteen and twenty years of service, of the base pay (no allowances) received at the end of their Naval service. Retainer pay was recomputed when there was a permanent base pay increase. Enlisted men who

subsequently received warrants or commissions in the Navy were permitted to continue receiving retainer pay. At thirty years' service in either the active Navy or Fleet Naval Reserve, an enlisted member could request placement on the Navy retired list. Such persons were required to keep "on hand" their uniforms, since the Secretary of the Navy had the authority during wartime or periods of national emergency to order members from the retired list to active Navy service.

After the First World War, the active duty manpower requirements contracted sharply and expectedly. Some 22,000 officers and 273,000 enlisted persons were released from the active Naval Reserve.⁹ While there was an attempt to organize this force as a reserve base for drilling and training, it was not satisfactory. The lack of adequate funding for the Naval Reserve Force and other "imperfections of the law" caused unsatisfactory progress. These "imperfections" were not specified in the records of Congressional testimony. It is, nonetheless, easy to

conclude that in the post-war competition for limited Congressional dollars, the priorities of the Naval Reserve Force were understandably well below active-duty requirements.

The Act of February 28, 1925¹⁰ abolished the old Naval Reserve Force and created a new Naval Reserve. This Act resulted from a study by the Navy Department on the condition of the Naval Reserve in the aftermath of the demobilization of Naval personnel. Under the 1925 Act, the Naval Reserve was to provide trained personnel during the first 120 days of conflict or until naval training stations and schools could produce the additional trained manpower needed by the Navy.¹¹ The Naval Reserve consisted of three components: Fleet Naval Reserve, Merchant Marine Naval Reserve and Volunteer Naval Reserve.

The Fleet Naval Reserve consisted of enlisted men who requested transfer from the Regular Navy after sixteen or more years of active service. These men received a

certain percentage of their active duty pay; however, they were not required to perform any service except during periods of war. The 1925 law did not affect the status or pay of Naval Reserve Force members who had retired either with or without pay. While there was no mention of retainer pay in the 1925 legislation, it did permit payments to qualified individuals authorized under the 1916 law which was explicit on retainer pay.

Enlisted men who transferred from the Regular Navy to the Fleet Naval Reserve created by the August 29, 1916 Act "shall receive the rate of pay they were legally entitled to receive in the Naval Reserve Force."¹² This meant those with sixteen or more years of active service who elected to receive retainer pay were still eligible to receive it.

The 1925 law still allowed enlisted men to transfer (on the effective date-- July 1, 1925) to the Fleet Naval Reserve after sixteen years of active service at one-third base pay and one half pay if they had twenty years of active service. Also, these members could still be required to perform

two months of active duty every four years in addition to a required physical examination every four years. After thirty years, they were transferred to the retired list of the regular Navy.¹³ (It is important to note that pay for men in the Fleet Naval Reserve was included in the appropriations for the Regular Navy establishment whereas funding for the Merchant Marine Naval Reserve and Volunteer Naval Reserve was included in the Naval Reserve appropriation.)

The Fleet Naval Reserve was looked upon as a reservoir of trained manpower to be used by the Regular Navy during emergencies or wartime to expand its forces.

The 1925 Act paralleled the 1916 law in reiterating that members of the Naval Reserve were obligating themselves "to serve in the Navy in time of war or during the existence of a national emergency declared by the President."¹⁴ Further, the 1925 provision provided that officers and men of the Naval Reserve, included those retired, could be

ordered to active duty by the Secretary of Navy in wartime or "when in the opinion of the President a national emergency exists."¹⁵ In peacetime, a reservist's consent for active duty recall was necessary.

Enlisted men who completed twenty years of active naval service and were physically qualified to perform duty in wartime could request transfer to the Fleet Naval Reserve and be paid one-half of their base pay (no allowances) at the time of transfer. Interestingly, the term retainer pay was not used in the law to describe this form of retired pay. The law also provided that these members would be required in peacetime to perform two months' active duty every four years. Further, they were required to receive a physical examination every four years to underscore the availability for duty if needed by the Navy.¹⁶

Upon thirty years' service, these men were transferred to the retired list of the regular Navy with one-half base pay of their ratings "plus all permanent additions (pay increases) thereof, and the allowances to which enlisted men of the same

ratings are entitled on retirement after thirty years service."¹⁷

The Merchant Marine Naval Reserve and the civilian officers and men of the Volunteer Naval Reserve were not required by law to drill or engage in training duty unless they consented. And, such training could be in a pay or non-pay status. The Marine Corps Reserve was organized along similar lines as the Naval Reserve with the exception of the Merchant Marine element.

The next major modification of the Naval Reserve occurred with the passage of the Naval Reserve Act on June 25, 1938.¹⁸ Even with the passage of the 1925 Act, the Navy was still not satisfied with the state and condition of its reserves.¹⁹ In November 1936, the Navy Department gathered its senior regular Navy officers as well as high ranking reserve officers for a meeting to discuss the reserves. As a result of this conference, the Navy Department proposed legislation (HR 10594) for a revitalized Naval Reserve.

The Naval Reserve Act of 1938 replaced the 1925 law, and a new Naval Reserve was created as a component part of the Navy-- consisting of the: Fleet Reserve, Organized Reserve, Merchant Marine Reserve and the Volunteer Reserve. There was active support in the Congress -- both the House and Senate -- for the new reserve proposal by the Navy Department.²⁰

Enlisted men who were members of the Fleet Naval Reserve and had sixteen or more years of active naval service were transferred to the Fleet Reserve created by the 1938 Act. All other members of the Fleet Naval Reserve were assigned to the Organized Reserve. Officers and men of Merchant Marine Naval Reserve and Volunteer Naval Reserve were transferred to the new Merchant Marine Reserve and Volunteer Reserve respectively. Further, the 1938 Act also abolished the Marine Corps Reserve established by the 1925 Act and created a new Marine Corps Reserve as a component part of the Marine Corps under the same provisions and concept as the

creation of the Naval Reserve.

Under the 1938 law, the Secretary of the Navy was given the authority to order any member of the Naval Reserve including those who were retired to active duty during war time or "when in the opinion of the President a national emergency exists and (they) may be required to perform active duty throughout the war or until the national emergency ceases to exist."²¹ However, in peacetime, a member of the Naval Reserve still had to consent to be ordered or continued on active duty.

The authority under the 1938 law was broad. Officers and men of the Fleet Reserve and those placed on the retired list of the Naval Reserve or Naval Reserve Force "shall at all times be subject to the laws, regulations and orders for the government of the Navy."²²

For the first time the 1938 Act permitted officers and men to be assigned to the Fleet Reserve. Officers and men discharged from Regular Navy after not less than four years

could, at the discretion of the Secretary of Navy, be appointed or enlisted in the Naval Reserve. Previously, only enlisted members could be assigned or officers who had resigned their commissions.²³

Enlisted men with sixteen years of active Navy or Marine Corps service were entitled to transfer to the Fleet Reserve and to receive one-third of their last base pay annually. For those with twenty years of active service, the benefit amounted to one-half of the base pay.²⁴ Currently, the law permits those members with over twenty years of service to receive retainer pay at two and a half percent for each year of active service -- up to a maximum of seventy-five percent of base pay.²⁵

The 1938 Act also allowed enlisted men, who enlisted after passage of the Act, to be transferred, upon their own request to the Fleet Reserve after twenty years' service, provided they were physically and otherwise qualified to perform duty in time of war.²⁶ These members were entitled to receive one-half their base pay. Upon thirty

years of service, the enlisted men were to be transferred to the retired list of the Regular Navy at the same pay rates that Regular Navy men were entitled to upon retirement after thirty years' active service.

Enlisted men with sixteen or more years of active service in the Regular Navy who were transferred to the Fleet Reserve could be required by the 1938 law to perform limited active duty in peace time -- not more than two months' active duty in each four-year period as well as being "examined physically" at least once during each four-year period.²⁷ If found physically unqualified, the enlisted member was to be transferred to the retired list of the Regular Navy. The law further provided pensions for those reservists injured on active duty.²⁸

For those enlisted men who retired between twenty and thirty years, the Navy looked upon them as an important resource for use during times of emergency or war to fill Navy requirements.

The Congress' intent was clear in its passage of the three major pieces of legislation on retainer pay for enlisted members of the Navy and Marine Corps, i. e. the Acts of 1916, 1925 and 1938. The Fleet Naval Reserve force of the Navy and Marine Corps which have gone through semantical changes were organized to create a body of trained men from which the Navy and the Marine Corps could call during wartime or other periods of national need.

The Navy concept of retainer pay has not been shared by the Army or the Air Force. This pay though based upon past active service was for future service to be performed, if required during wartime or other times of national need. (This covered enlisted men who retired from active Navy or Marine Corps service between their twentieth and thirtieth years of service.)

The important element of the concept was that these members were to be retained in reserve status-- not the retired list.²⁹

The various laws creating this category as well as the benefits clearly expressed the intent of Congress to provide the Navy and Marine Corps trained manpower subject to

recall when needed to support the nations' defense needs.

Eligible enlisted men receiving retainer pay for past active service were clearly obligated by the Congressional statute -- even through successive changes -- to perform when there was a need by the nation until their thirtieth year of total service -- active and in the reserves. And, to strengthen Congress' intent on maintaining a reservoir of available, trained, and physically fit sailors and Marines. Periodic active duty training to maintain skills was authorized as well as required physical examinations to ensure fitness for war time duty. Today, these requirements for those receiving retainer pay still remain. 30

The retainer pay concept of having trained enlisted men in a reserve pool until their thirtieth year of service -- active and reserve -- has been sound. However, to be effective the periodic training for these members to maintain proficiency had to be a reality rather than merely a statutory requirement. Unfortunately, the record in this aspect has

not been considered satisfactory. Funds have not been sufficient to provide for active duty training for these enlisted members in the Fleet Reserve receiving retainer pay.³¹

Lastly, retainer pay is essentially a benefit for enlisted members in the form of retired pay based on past active duty service. The Navy and Marine Corps have incorporated the retainer pay concept (for future obligated service) with retired compensation, whereas other services have not.

Current law³² authorizes enlisted members of the Fleet Reserve and the Fleet Marine Corps Reserve who are receiving retainer pay -- between their twentieth and thirtieth year of service -- to be ordered to active duty involuntarily when the Congress has declared war or a national emergency or when the President has declared a national emergency. Except for the Ready Reserve of all military components, this is the only group of military members who may be called to active service by the

President — a very key differentiating element among military members who have completed twenty years of active service.

The Armed Forces Reserve Act of 1952 permits reservists to be ordered to active duty involuntarily when the Congress has declared war or a national emergency.³³ Essentially, all members receiving retainer or retired pay, who have not been discharged from the military, are still obligated to serve their country in times of crisis as determined by the Congress.

REFERENCES

- 1 30 Stat 1008, section 17, PL 55-413, 1899
- 2 If disabled, the enlisted member was permitted to apply for early retirement.
- 3 34 Stat 3451. Later, on June 4, 1920, (41 Stat 835) service in the Coast Guard was authorized to be credited for retirement.
- 4 34 Stat 1217, PL 59-2515, 1906
- 5 39 Stat 556 (Act of August 29, 1916) PL 64-417
The Naval Reserve Force consisted of six classes (components): The Fleet Naval Reserve, the Naval Reserve, the Naval Auxiliary Reserve, the Naval Coast Defense Reserve, the Volunteer Naval Reserve, and Naval Reserve Flying Corps. A Marine Corps Reserve was also established as a part of the Marine Corps under the same provisions as the Naval Reserve Force.
- 6 39 Stat 588, PL 64-417, 1916
- 7 39 Stat 590
- 8 39 Stat 589 and 39 Stat 590
- 9 Report, 75th Congress, 3rd Session, House of Representatives, Committee on Naval Affairs, No. 700, May 18, 1938, p. 3596.
- 10 43 Stat 1080, PL 68-374, 1925
- 11 Report, Ibid, p. 3598
- 12 Section 24 (43 Stat 1087), PL 68-374, 1925
- 13 Sections 26 and 27 (43 Stat 1087-8)

- 14 Section 4 (43 Stat 1081)
- 15 Section 9 (43 Stat 1082-3)
- 16 Section 23 (43 Stat 1087)
- 17 Ibid.
- 18 52 Stat 1175. PL 75-690, 1938
- 19 Report Ibid, p. 3597
- 20 See Report, 75th Congress, 3rd Session, US Senate,
Committee on Naval Affairs, No. 2082, June 7, 1938.
Most of the report parallels the House of Represen-
tatives' report on the HR 10594. See Report, 75th
Congress, 3rd Session, US House of Representatives,
Committee on Naval Affairs, No. 2465, May 24, 1938.
- 21 Section 5, Act of June 25, 1938. Also the Secretary
of the Navy was authorized to recall those members
on the honorary list established by section 309.
- 22 Section 6
- 23 Section 201
- 24 Section 203
- 25 10 Title 6330 (August 10, 1946, 60 Stat 993)
- 26 Section 204
- 27 Section 206
- 28 Section 304

- 29 See *Murphy v. U.S.*, 1903, 38 Ct Cl 511.
After retirement, enlisted men have not been
considered to be part of the military.
- 30 10 USC 6485
- 31 See Report, 75th Congress, 3rd Session, House of
Representatives, Committee on Naval Affairs,
No. 2465, May 24, 1938, p. 3611 and 47 Stat 431 and
439. Currently, the Navy FY 1977 Budget has no
funds for active duty training for members receiving
retainer pay.
- 32 10 USC 6485
- 33 66 Stat 481. Pl 82-476, 1952. See in particular
sections 207(c) and 212(d).

14 April 1977

TITLE III - RESERVE RETIREMENT

Legislative Authority. 10 USC Section 1331 through 1337
1970

Purpose. To determine the legislative history of retirement for reservists.

Background

Historically, the members of the Reserve Components of the military services of the United States were not entitled to retirement credit for time spent in a nonactive duty status. When there was a requirement to expand the military forces in periods of crisis or war, the reserve elements were called to active duty for the duration of the nation's needs. Then, after the need subsided, these personnel left the active service to return to their homes and employment pursuits. The period of adjustment was not totally satisfactory in all cases, and the economic environment in both post World War periods caused these reservists as well as other veterans additional problems in returning to normal lives.

The time between the end of World War I and the outbreak of hostilities in 1941 is an instructive period in viewing attempts to maintain a reserve military force for our national security needs.

Many officers in the First World War had received reserve commissions. For a ten-year period following 1920 these officers dropped out of the reserves at a rate of 10% a year. Of the 75,000 who accepted reserve commissions after World War I, about 5,000 remained in the Organized Reserve Corps by Pearl Harbor.

Only the ROTC program supported an enlarged commissioned manpower pool, for 127,000 officers were commissioned through ROTC between World War I and II.¹ Even though ROTC provided a major source of new officers during this period, 62,000 of 127,000 dropped out prior to the outbreak of World War II -- an economic and trained manpower loss.² If more of the officers commissioned between World War I and II had remained in the reserves, the fiscal and military savings would have been significantly greater. However, there was little economic incentives for these officers to stay in the Reserves. These people, therefore lost interest.

Even with drill pay, the National Guard, for example, could recruit only an aggregate total of 200,000 officers and enlisted persons during the period between World War I and II. In this period, the Organized Reserves had a similarly low rate, only 100,000 officers in an active reserve status -- with 90,000 serving in World War II.³

While the United States and its people had been successful in achieving military victory over its adversaries, the Congress and the War and Navy Departments recognized that the manning and training of Reserve Components could have been more satisfactory in preparing for wartime duty. The frequent turnover of reserve personnel was a primary reason for many difficulties encountered by the activated reserve military forces during World War II. As a group, the reserves made major contributions during the war. The problem lay with not having a body of personnel with sufficient training time in the reserves to be effective when called.

The War Department General Staff Committee on National Guard and Reserve Policy recommended policies approved by the Secretary of War in October 1945 that guided the postwar organization of the National Guard in the Organized Reserve. An essential consideration in these policies was that great numbers of trained manpower would be required to be available upon mobilization. With the sudden intrusion of the atomic age, the nation's military leadership recognized the need for having readily at hand a sizeable reservoir of trained troops.

The United States would no longer possess the luxury of time as in previous mobilizations.

During this same period, our largest allies, the Soviet Union and China, began to be viewed as potential adversaries. Despite staggering wartime losses each was rebuilding a huge foundation of military manpower. There were calls both in the Congress and the military services for the United States to take positive action to demonstrate its resolve by having its reduced active military force buttressed by a mechanism for activating a much larger trained and effective reserve force. In this manner America could show the other centers of power that it still maintained a potent military capability.

Nevertheless, the United States continued the demobilization of its mammoth military force of over twelve million men and women. Reservists rushed to leave military service as did those who had been drafted and others who wanted to return to the civilian environment. Recruiting reservists in this environment proved especially difficult. During 1945-1948 the reserve recruitment programs were affected in varying degrees. The Navy was

successful in its recruiting drives for reservists. The Army and the Air Force were experiencing difficulty in attaining their goals in recruiting reservists.

The new military mobilization requirements as established by the War Department in 1947 for the post war period called for 600,000 reservists and in a higher state of training and alertness, whereas only one-third of this number was actually produced between World War I and II. Also, there was increased need for manning the less glamorous units, such as in supply and food services.

With such a backdrop of pressing reserve personnel needs during times when the United States required an expanded force of manpower, there was a necessity for other monetary incentives to produce increased numbers to meet minimum force objectives.

Training pay alone was apparently inadequate to spur reserve retention. It was argued that an adequate reserve retirement system would allow reserve leadership to be more demanding in its standards of performance

(i.e., "produce or you won't be retained long enough to qualify for reserve retirement").

On February 19, 1947 representatives of the War and Navy Departments testified at a hearing held by the House Armed Services Committee on HR 663, a bill to provide retirement benefits for reserve officers and enlisted men. At the conclusion of their testimony, the Committee discontinued the hearings and directed that representatives of the War and Navy Departments and the Reserve Components meet to prepare a single and inclusive legislative package on military retirements.

The Congress called upon the Pentagon to propose legislation for the retirement of Regular Army Officers paralleling authority previously granted to the Navy Department. Further, the Congress directed that retirement benefits be equal for both Army and Navy reserve components and "be satisfactory to the interested agencies of the representative services." The Pentagon moved rapidly, secured interservice agreement and submitted the proposal (HR 2744) within a month to the Chairman of the House Committee on Armed Services.

The legislative history of reserve retirement documents, particularly, during the 1947 and 1948 Congressional sessions, the understanding and sensitivity expressed by members of Congress that there should be equal treatment of reservists and regulars in compensating those who served their country. There was no major opposition to the concept of reserve retirement. It received wide support by both the regular and reserve components of all the military services as well as reserve organizations. There was a consensus that reserve retirement could prove to be an effective means of recruiting reservists and retaining them for extended periods for training.

With the Congressional mandate on proposing equality of retirement legislation for regulars and reservists, the Pentagon included regular retirement benefits - such as medical, commissary, exchange for reserve retirement. The American public was in no mood to return to the uniform - even though it was to be worn on weekends and during annual summer encampments. Major General W. S. Paul, the Director of Personnel and Administration, War Department General Staff, expressed this feeling in his May 1947 testimony to the Congress when he stated:

There has been a lag in recruiting (reservists) due always to the anathema to anything having to do with the uniform right after a war. 6

By keeping members of the Reserve Components active in the reserves over an extended period of time, the reserve forces could be better trained and more ready to meet the manpower and equipment needs of national defense. In his May 1947 testimony before the House Committee on Armed Services on (HR 2477), Major General Paul stated:

The War Department feels that enactment of retirement legislation for the reserve components is highly desirable. Such a provision in the law will offer not only an inducement toward increasing much needed voluntary enrollments, but, should operate to vitalize these components for future service to our country in time of emergency. 7

In further Congressional testimony during May 1947, Rear Admiral T. L. Sprague, Chief of Naval Personnel, said that the purpose of the proposed legislation,

is to create greater incentive for service in the Reserve Components, and thereby contribute to increased effectiveness of those Reserve components actively engaged during peacetime in vigorous and realistic Reserve training program. 8

The Admiral further commented that the retirement program for the Naval Reserve,

is essential to keeping the Naval Reserve healthy in the future. 9

Representatives of military organizations voiced essentially the same arguments as the Pentagon for having retirement at age sixty. Former Congressman (and former Major General, USMC) Melvin J. Maas, the President of the Federation of Reserve Officers Associations, in his Congressional appearance said that the retirement arrangements proposed partially compensate a member of the Reserve in "his later years for the great sacrifices he made during his (earlier) ¹⁰ earning capacity."

Major General Ellard A. Walsh, President of the National Guard Association of the United States, joined by stating:

"If the postwar plans of the War Department...are carried out, then some such incentive and security as provided in this bill must be enacted into law. To do otherwise, would be to ignore the principle of justice and equity and adversely affect our security. 11

Finally, the President signed the Army and Air Force
Vitalization and Retirement Equalization Act in 1948.¹²

It was a landmark piece of legislation for reservists.
It represented the culmination of efforts by reservists
and their organizations to equalize the treatment of
regular and reserve members of the armed forces for
active duty service. Basically, the three main titles
of the Act (I, II, III) provided:

- (I) the elimination of substandard officers
of the Regular Army and Regular Air Force;
- (II) the placement of officers and warrant
officers of the Regular Army and the
Regular Air Force on an equal basis with
personnel of the Navy for purpose of
years of service required for voluntary
longevity retirement and retirement in
the highest temporary rank; and,
- (III) the establishment of retirement pay for
officers and enlisted personnel of the
Reserve Components of the military ser-
vices based both on active duty time
and satisfactory service performed during
periods of inactive duty.

The provisions under Title III of the Act represented a new concept and policy regarding retirement benefits for reservists. Prior to this law, the only retirement benefit that could be paid reservists was disability benefits resulting from a disabling injury incurred in line of duty while a reservist was on active military service. Thus, for the first time, inactive service of a reserve member could be credited for retirement pay.

Further, reserve retirement at age 60 seemed to be based on consensus by the Pentagon and the Congress. Cost was a factor. If the reserve retirement age were to be reduced to 55, 50, or even lower, it was believed that the federal government would be subsidizing such retirees in their regular employment. And, that was clearly not a desirable alternative. Age 60 was agreed upon as a reasonable age at which to compensate those reservists for earlier sacrifices. This age was comparable to the Federal Civil Service retirement program. For example, former Congressman Maas testified that "if and when civil service is brought down to 55 or a straight 30 years, then I think this (Title III) ¹⁴ should be (also reduced)."

On the other hand, retirement at age 55 could have taken more people out of active competition for employment. For example, a reservist at age 55 with Title III retirement together with other sources of income might have been induced to retire from a civilian job. However, most employment was

generally tied to government and private pension and social security programs requiring work until age 60 or 65. By removing an older group of workers from the work force -- i.e., those over age 55 -- more jobs could have been made available for younger men including returning veterans. This group was experiencing an acutely high level of unemployment in the post World War II period.

Basically, Section 302a, Title III, of the Act provided that,

any person who, upon attaining or having attained the age of sixty years, has performed satisfactory Federal service...in the status of a commissioned officer, warrant officer, flight officer, or enlisted person...and has completed an aggregate of twenty or more years of such satisfactory service ...shall, upon application thereof, be granted retired pay. 15

The section further defined satisfactory service and the basis for computing retirement eligibility. If such persons receive retirement pay under another program or law, they were to be excluded from receiving retirement benefits under Title III. 16 17

Reserve members who had not reached age sixty were given the opportunity of requesting transfer to an inactive status list of the appropriate military service

when they had fulfilled their eligibility for retired pay under Title III. At this time, these reserve personnel were not required to participate in training or other programs or entitled to credit for additional Federal service. These persons may, however, be called to active duty involuntarily upon declaration of war or national emergency by the Congress.

Once reserve members receive Title III retirement, they continue to remain eligible for recall upon Congress' declaration of war or emergency. However, reserve members either on an inactive status list or retired status list will not be recalled unless the Secretary of Defense "determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in ¹⁸ the required category who are readily available."

Therefore, it may be argued that such reserve personnel, at least those personnel on the inactive status list, should be considered as a reservoir for trained talent which could be included in mobilization plans for reserves.

An additional aspect of the Title III Retirement provision was to prevent the "disintegration" of over one million reservists -- officers and enlisted personnel who

were trained during World War II and had experience valuable for a peacetime reserve force. The large reservoir of personnel trained and experienced during World War II provided a potent force to support the nation's defense needs.

The reserve retirement program, Title III retirement, was to lend an incentive for recruiting and retaining personnel in the reserves for a prolonged period of service and accelerated training. Also, this economic incentive was to provide manpower to contribute muscle and fibre in the reserve forces to achieve their missions in the nation's military force structure.

While the apparent manifestation of the 1948 Act was to grant comparability of retired pay for reserve members with regular members of the military services, the hearings conducted by the Congress during 1947 and 1948 on HR 2744 clearly document that the sole intent of Title III retirement was to provide an incentive -- a monetary incentive -- to members of the Reserve Components to perform continuous Reserve service and for longer periods of time.

The use of this economic incentive, as it was viewed by Congress, would materially assist the United States in maintaining and operating adequate reserve forces; provide a greater number of trained reserve members; and would be economical by lessening turnover.

Economic inducements, however, don't end upon enlistment. It is necessary to follow through with establishing meaningful programs to sustain interest in the Reserves. This has continued to be a persistent concern of the reserve forces leadership.

Another analysis is needed to measure the effectiveness of Title III retirement pay for reservists and its contribution to maintaining a well-trained and effective fighting force in meeting the nation's defense needs.

After thirty years there are some 63,000 officers and about 11,500 enlisted members currently receiving
21
Title III retirement. While reserve retirement pay may have been useful in retaining many reservists to meet the requirements of the Korean war, the benefits of such a retirement system could not be assessed in the Vietnam conflict since very few reservists were called.

Significantly, through the time of this writing (April 1977), there has been no change in the 1948 reserve retirement legislation. The thirty-year hiatus may be at an end, for pressures are building in the reserve forces community. In extensive contacts with reserve forces members throughout the United States during the latter part of 1976 and the early months of 1977, the Reserve Compensation System Study (RCSS) staff have heard many calls for changing the eligibility age of reserve retirement to a lower age to conform with the growing practice in both government and private industry of reducing the eligible age to qualify for an annuity.

It has been over twenty years since changes were made in U. S. government Civil Service retirement provisions permitting employee retirement at a lower age. The Civil Service Retirement Act of 1930 was amended in July 1956 so that:

Any employee who attains the age of sixty years and completes thirty years of service shall, upon separation from the service, be paid an annuity...,
....age fifty-five and completes thirty years....shall....be paid a reduced annuity... 22

Ten years later, in the Federal Salary and Fringe Benefit Act of 1966, retirement for civil servants was further liberalized when the above provisions were changed as follows:

Any employee who attains the age of fifty-five years and completes thirty years of service shall, upon separation from the service, be paid an annuity....
....age sixty and completes twenty years of service shall....be paid an annuity... 23

The Civil Service precedent, coupled with a broadly discernible trend in the private sector towards permitting earlier retirement~ resulted in a Department of Defense legislative initiative in 1975. This took the form of the Reserve Retirement Modernization Act which, among other provisions, offered the option of retirement with reduced payments as early as fifty years. This proposal is still being reviewed by the Office of Management and Budget. The Department decided not to resubmit the proposal to the 95th Congress in 1977; however, it has asked the RCSS to review the proposal's provisions as part of the RCSS' study of the entire reserve compensation package.

REFERENCES

- 1 Hearings for the House Armed Services Committee, Subcommittee No. 7, Retirement, No. 169, May 12, 1947, 80th Congress, 1st Session; pp 3453. Between World War I and II, most of the ROTC officers received reserve commissions upon graduation from one of the many land grant colleges. In return for "including studies in military tactics" in their curricula, these colleges received financial assistance from the federal government under the Morrill Acts of July 2, 1862 (12 Stat 503) and August 30, 1890 (26 Stat 417). This was clearly a form of economic incentive to produce reserve officers.
- 2 Id, pp 3453
- 3 Id, pp 3304
- 4 PL 79-305, February 21, 1946 (60 Stat 26)
- 5 The February 19, 1947 Congressional hearings on HR 663 were not published. See statement by Major General W.S. Paul, Director of Personnel Administration, War Department General Staff, in hearings, 80th Congress, 1st Session, House of Representatives, Committee on Armed Services, Subcommittee No. 7, Retirement, No. 169, May 12, 1947, pp 3299-3300.
- 6 Id, pp 3317
- 7 Id, pp 3301
- 8 Id, pp 3331
- 9 Id, pp 3333
- 10 Id, pp 3363
- 11 Id, pp 3376
- 12 PL 80-810, June 29, 1948 (62 Stat 1081)
- 13 The National Guard, The Reserve Corps of the Army of the United States, The Reserve Components of the Air Force of the United States, The United States Naval and Marine Corps Reserves, and the United States Coast Guard Reserve

- 14 Id, pp 3363
- 15 During the course of the 1947 and 1948 Congressional hearings on the bill, there was a divergence of opinion between the House and Senate regarding the responsibility for paying Title III retirement. The original House version of HR 2744 provided that the respective military service "shall certify to the Administrator of the Veterans Administration the names of all persons entitled to retirement pay." The House believed that reserve officers, warrant officers and enlisted men who retired at age sixty will "no longer have any direct connection with the Services." Also, the House looked upon the Veterans Administration as the agency responsible since the Civil War for the pension problems of veterans. In its report to the Senate, the House stated "retirement pay is in effect a pension." However, the Senate did not accept this logic and amended the bill to require the respective services to pay persons retiring under Title III.
- 16 See Appendix A (Photocopy of Title III)
- 17 Section 305
- 18 Section 308. Also see 10 Title 273 and 672. Section 207(c), Armed Forces Reserve Act of 1952, (66 Stat 483), states: Members in the Retired Reserve may, if qualified, be ordered to active duty involuntarily, but only in time of war or national emergency declared by the Congress or when otherwise authorized by law. Section 803 of the 1952 Act lists all acts or parts of acts that are repealed by the 1952 statute. There is, however, no reference that Section 308 of the 1948 Act is repealed.
- 19 Senate Report No. 1543, 80th Congress, 2nd Session, June 8, 1948, pp 2 and 9.
- 20 Hearings for the House Armed Services Committee, Subcommittee No. 7, Retirement, No. 169, May 12, 1947, 80th Congress, 1st Session; and House of Representatives Report No. 816, July 9, 1947, pp 9 and 11.

- 21 Memorandum, Office of the Assistant Secretary of
Defense (Manpower and Reserve Affairs), March 31, 1977
Serial 77-M3486.
- 22 PL 84-854 (70 Stat 749) July 31, 1956
- 23 PL 89-504 (80 Stat 301) July 18, 1966

Extract from PL 80-810
62 Stat 1081 (1948)

(2 STAT.) 80TH CONG., 2d SESS.—CH. 706—JUNE 29, 1948

TITLE III

RETIREMENT WITH PAY OF OFFICERS AND ENLISTED PERSONNEL OF THE NATIONAL GUARD AND RESERVE CORPS OF THE ARMY OF THE UNITED STATES, THE RESERVE COMPONENTS OF THE AIR FORCE OF THE UNITED STATES, THE UNITED STATES NAVAL AND MARINE CORPS RESERVE, AND THE UNITED STATES COAST GUARD RESERVE

SEC. 301. (a) The Secretary of the Army is authorized to establish the Army of the United States Retired List and the Secretary of the Air Force is authorized to establish the Air Force of the United States Retired List, to be published annually in the official Register of the service concerned, upon which respectively shall be placed the names of all commissioned officers and former commissioned officers of the Army of the United States or the Air Force of the United States, as the case may be, other than those of the Regular Army or the Regular Air Force, heretofore or hereafter granted retirement pay under section 5 of the Act of April 3, 1909 (33 Stat. 557, as amended, 10 U. S. C. 456), section 1 of the Act of September 26, 1911 (35 Stat. 733, 10 U. S. C. 456a), and section 302 of this title, or any law hereafter enacted to provide retirement pay for commissioned officers other than those of the Regular Army or the Regular Air Force, and the names of all warrant officers and enlisted men of the Regular Army or the Regular Air Force heretofore or hereafter retired under any provision of law who, by reason of service in temporary commissioned grades in the Army of the United States or the Air Force of the United States, or in any of the respective components thereof, are entitled to be retired with commissioned rank or grade.

Army of U. S. and
Air Force of U. S.
Retired List.

Publication.

App.

(b) The Secretary of the Navy is authorized to establish a United States Naval Reserve Retired List to include the names of all officers and enlisted personnel of the Naval and Marine Corps Reserve who are granted retired pay under the provisions of this title, the provisions of Public Law 305, Seventy-ninth Congress, or any law hereafter enacted to provide retired pay for such officers and enlisted personnel.

U. S. Naval Reserve
Retired List.

60 Stat. 24.
34 U. S. C. §§ 410-
419a, 410a-410c, 350i;
Supp. I, § 410a et seq.;
36 U. S. C. app. § 776;
Supp. I, § 776 note,
Retirement.

SEC. 302. (a) Any person who, upon attaining or having attained the age of sixty years, has performed satisfactory Federal service as defined in this section in the status of a commissioned officer, warrant officer, flight officer, or enlisted person in the Army of the United States or the Air Force of the United States, including the respective reserve components thereof, and also including the federally recognized National Guard prior to 1933, the United States Navy including the reserve components thereof, the United States Marine Corps, including the reserve components thereof, or the United States Coast Guard, including the reserve components thereof, and has completed an aggregate of twenty or more years of such satisfactory service in any or all of the aforesaid services, shall, upon application therefor, be granted retired pay: *Provided*, That for the purposes of this section the last eight years of qualifying service for retirement under this title must have been service as a member of a reserve component except that any member of a reserve component of the Air Force of the United States shall be entitled to include service as a member of a reserve component of the Army of the United States performed on or prior to July 26, 1919: *Provided further*, That for the purposes of this subsection, continuous service as a member of a reserve component and as a member of the Regular Army, Navy, Air Force, or Marine Corps, shall not be deemed to be service in a reserve component: *Provided further*, That no person who was a member of a reserve component on or before August 15, 1915, shall be eligible for retirement benefits under this title unless he performed active Federal service during any portion of either of the two periods beginning April 6, 1917, and

Reserve service re-
quirements.

Limitation.

ending November 11, 1918, and beginning September 9, 1910, and ending December 31, 1916.

Computation of
service credit.

(b) Subsequent to the enactment of this Act, a year of satisfactory Federal service, for the purposes of this section only, shall consist of any year in which a person is credited with a minimum of fifty points, which points shall be credited on the following basis:

(1) One point for each day of active Federal service;

(2) One point for each drill or period of equivalent instruction, such drills and periods of equivalent instruction to be restricted to those prescribed and authorized by the Secretary of the respective service for the year concerned, and to conform to the requirements prescribed by other provisions of law;

(3) Fifteen points for membership in a reserve component for each year of Federal service other than active Federal service.

Pub. p. 1000.

(c) Each year of service as a member of a reserve component prior to the enactment of this Act shall be deemed to be a year of satisfactory Federal service for the purposes of this section, subject to the provisions of subsection (e) of section 306 of this Act.

Retention after 60.

(d) Application for retirement with pay made pursuant to this section shall be submitted to the Secretary of the service in which the applicant last served or is serving at the time of such submission.

(e) Any person who, upon attaining the age of sixty years, has qualified for retirement with pay pursuant to this title, may, with his consent and by order of the cognizant Secretary, be retained on duty to perform Federal service. Any person so retained shall be credited with equivalent periods of Federal service for the performance of such duties.

Rate of retired pay.

SEC. 303. Any person granted retired pay pursuant to the provisions of this title shall receive such pay at an annual rate equal to $2\frac{1}{4}$ per centum of the active duty annual base and longevity pay which he would receive if serving, at the time granted such pay, on active duty in the highest grade, temporary or permanent, satisfactorily held by him during his entire period of service, multiplied by a number equal to the number of years and any fraction thereof (on the basis of three hundred and sixty days per year) which shall consist of the sum of the following:

(i) All periods of active Federal service;

(ii) One day for each point credited pursuant to subparagraphs (2) and (3) of subsection (b) of section 302 of this Act, but no more than sixty days shall be credited on this basis in any one year for the purposes of this section:

Limitation.

Provided, That no person shall be entitled to receive such retired pay at an annual rate in excess of 75 per centum of said active duty pay:

Service credit.

Provided further, That for each year of Federal service, other than active Federal service, performed as a member of a reserve component prior to the date of enactment of this Act and credited in accordance with subsection (c) of section 302 of this title, such member shall be credited with fifty days for each of such years, for the purposes of this section.

Supra.

Standards and qualifications for retention or promotion.

SEC. 304. As soon as may be practicable after the effective date of this title, the Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy shall, by regulations not inconsistent with this or any other Act, prescribe (a) appropriate standards and qualifications for the retention or promotion of members of reserve components of the Army of the United States, the Air Force of the United States, and the United States Navy and the Marine Corps, respectively, and (b) appropriate and equitable procedures under which the compliance by each member of each such reserve component

REFERENCES

62 STAT.] 80TH CONG., 2d SESS.—CH. 703—JUNE 20, 1918

with such standards and qualifications shall be determined periodically. Whenever any member of any such reserve component thereafter shall fail to conform to the standards and qualifications so prescribed he shall be transferred to an inactive reserve status if qualified for such status, retired without pay if qualified for such retirement, or his appointment or enlistment shall be terminated. Such action shall effect a termination of such person's right to accrue retirement benefits under this title but shall not affect any rights which have accrued prior to the time that such action shall have been taken with respect to such person: *Provided further*, That the Secretary of the Navy with respect to personnel of the Navy and Marine Corps, including the reserve components thereof, shall determine what has constituted, prior to the date of enactment of this title, satisfactory performance of Federal service other than active Federal service.

Procedure on non-conformance with standards.

Termination of retirement benefits.

SUC. 305. The provisions of this title shall not be applicable to any officer or enlisted person of the Regular or reserve components of the Army, Navy, Air Force, or Marine Corps who, prior to or subsequent to the date of enactment of this title, is entitled to receive, or is receiving under any other provision of law, retired pay for military or naval service, including retainer pay as a transferred member of the Fleet Reserve. No period of service otherwise creditable in determining the eligibility of any person to receive, or the amount of, any annuity, pension, or old-age benefit payable under any provision of law on account of civilian employment, in the Federal Government or otherwise, shall be excluded in such determination because such period of service may be included, in whole or in part, in determining the eligibility of such person to receive, or the amount of, any retired pay payable under this title.

Inapplicability of provisions.

SUC. 306. For the purposes of this title—

(a) The term "Federal service" shall be deemed to include all active Federal service and all service in a reserve component other than active Federal service, or both, except as provided in (e) and (f) below.

"Federal service."

(b) Satisfactory Federal service or Federal service satisfactorily performed, as used in this title in referring to Federal service herein mentioned, shall be deemed to mean that the person concerned shall have conformed to such standards and qualifications as may have been required of him.

(c) Service in a reserve component, as used in this title, shall consist of service in the following organizations, and shall be deemed to be Federal service for the purposes of this title—

- (1) the National Guard of the United States;
- (2) the National Guard while in the service of the United States;
- (3) the federally recognized National Guard prior to 1933;
- (4) a federally recognized status in the National Guard prior to 1933;
- (5) the Officers' Reserve Corps and the Enlisted Reserve Corps prior to the enactment of Public Law 460, Eightieth Congress, approved March 25, 1918;
- (6) the Organized Reserve Corps;
- (7) the Army of the United States without component;
- (8) the Naval Reserve and the Naval Reserve Force, excluding those members of the Fleet Reserve and the Fleet Naval Reserve transferred thereto after completion of sixteen or more years of active naval service;
- (9) the Marine Corps Reserve and the Marine Corps Reserve Force, excluding those members of the Fleet Marine Corps

Act, p. 27.

Reserve transferred thereto after completion of sixteen or more years of active naval service;

(10) the Limited Service Marine Corps Reserve;

(11) the Naval Militia who have conformed to the standards prescribed by the Secretary of the Navy; and

(12) the National Naval Volunteers;

(13) the Air National Guard;

(14) the Air Force Reserve (Officers or Enlisted sections);

(15) the Air Force of the United States without component; and

(16) the Coast Guard Reserve.

"Active Federal service."

(d) The term "active Federal service" shall include all periods of annual training duty and all prescribed periods of attendance at such service schools as have been, or may be designated as such by the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force for their respective services, or by law, or any other period of time when ordered to active duty, under competent Federal orders.

(e) With respect to personnel of the Army or the Air Force, service in the inactive National Guard or Air National Guard, in a non-federally recognized status in the National Guard or Air National Guard, or in an inactive Reserve section of the Officers' Reserve Corps or an inactive officers' section of the Air Force Reserve shall not be deemed to be Federal service.

(f) Subject to the provisions of subsection (d) hereof, service on the Honorary Retired List of the Naval and Marine Corps Reserves shall not be deemed to be Federal service.

Rules and regulations.

SEC. 307. The Secretary of the Army with respect to personnel of the Army, the Secretary of the Navy with respect to the personnel of the Navy and Marine Corps, and the Secretary of the Air Force with respect to personnel of the Air Force, are authorized to prescribe such rules, regulations, and procedures as they may deem necessary to effectuate the provisions of this title.

Transfer to inactive status list.

SEC. 308. Any person who has not attained the age of sixty years but is eligible in all other respects to receive retired pay under the provisions of this title may, at his own request, and by the direction of the Secretary of the cognizant service, be transferred to such inactive status list as has been, or may be established by law or regulation for the reserve components of the Army of the United States, Navy, Air Force of the United States, or Marine Corps. After the effective date of such transfer he shall not be required to participate in any training or other program prescribed for said reserve components, and he shall not be entitled to be credited with either additional active Federal service or additional Federal service in a reserve component other than active Federal service for the purpose of this title while he is in an inactive status. Any such person may, in the discretion of the cognizant service Secretary, be recalled to active status at any time, and if so recalled, he shall be credited with active Federal service or Federal service in a reserve component other than active Federal service, or both for the performance of such duty.

Recall to active status.

Restriction.

SEC. 309. Service as a member of a reserve component shall be subject to the requirements of the military services and appropriations available therefor from time to time. No person shall be ordered to active Federal Service for the sole purpose of qualifying for retirement benefits under this title.

Back pay or allowances.

SEC. 310. No back pay or allowances for any period prior to the date of enactment thereof shall accrue to any person by reason of enactment of this title.

Applicability to Coast Guard Reserve.

SEC. 311. The provisions of this title, except as may be necessary to adapt the same thereto shall apply to personnel of the Coast Guard

62 STAT.] 80TH CONG., 2D SESS.—CHS. 708-711—JUNE 29, 1948

Reserve in relationship to the Coast Guard in the same manner and to the same extent as they apply to personnel of the Naval and Marine Corps Reserve in relationship to the Navy: *Provided*, That wherever authority is given to the Secretary of the Navy, similar authority shall be deemed to be given to the Secretary of the Treasury to be exercised with respect to the Coast Guard except at such time or times as the Coast Guard may be operating under the Secretary of the Navy.

SEC. 312. The provisions of this title shall become effective for each of the services concerned when directed by the cognizant Secretary, but not later than the first day of the seventh month following the date of enactment.

SEC. 313. There are hereby authorized to be appropriated such funds as may be necessary to carry out the purposes of this Act.

Approved June 29, 1948.

Effective date.

Appropriation au-
thorized.

21 December 1977

SEPARATION PAY

(Readjustment Pay for Reservists Leaving Active Duty)

Legislative Authority: 10 USC 1163 (1976 ed)

Purpose: To develop the legislative history and the reasoning for the criteria that determine reserve readjustment pay.

Background: Reserve readjustment pay is similiar to severance pay for regular personnel. Reserve personnel who have been on active duty for at least five continuous years but less than eighteen years (those with eighteen years can remain for twenty and then retire) and are involuntarily released, are entitled to receive a lump sum payment equal to two months' pay for each year of active duty -- but never more than the lesser of two years' pay or \$15,000.

Nondisability severance pay has a long legislative history in one form or another. At times it has been awarded only to personnel forced out of service against their wishes. The Act of May 14, 1800 (2 Stat 85) is an early example of such legislation. It empowered the President to discharge by June 15, 1800 any Army "officers, non-commissioned officers and privates . . . except the engineers, inspector of artillery, and inspector of fortifications," and authorized 3 months' additional pay for personnel so dis-

charged. At other times, severance pay has been paid without regard to the voluntary or involuntary nature of the separations on which it was predicated. The Act of December 24, 1811 (2 Stat 669), for example, awarded a "bounty" of 3 months' pay and 160 acres of public land to all former enlisted personnel who had "faithfully performed their duty whilst in service."¹

The origin of present-day readjustment pay can be found in The Officer Personnel Act of 1947.² This was a humane attempt to bring the active force to peacetime levels after World War II. This act provided regular officers with two months' pay for each year of active service but no greater than two years' pay. The extensive legislative history weighed the broader issues of personnel policy without explaining the rationale for the severance pay provision.

However, the hearings revealed the source of the provision.

A subcommittee hearing of the House Armed Services Committee had stated that the Bureau of Budget requested the Navy input to the bill be revised to conform to the Army version.³

The provision in the Army bill resembled an earlier recommendation. General Dahlquist had recommended that regular officers released from active duty before retirement would get either two, one, or zero years of severance pay depending upon rank and years of service.⁴

The following table compares the original recommendations with provisions of the 1947 law.

<u>Rank</u>	<u>Years of Service</u>	<u>Severance pay Recommendation</u> by Dahlquist	<u>1947 law</u> (@ 2 months for each YOS)
Major	14 to 20	2 years	2 yrs
Major	less than 14	1 year	28 mo. or less
Captain	14 to 20	2 years	2 yrs
Captain	less than 14	1 year	28 mo. or less
1st Lt	all	1 year	probably less than 1 year
2nd Lt	all	0	probably less than $\frac{1}{2}$ year

Later, an unpublished Army recommendation put forward the identical severance pay provision that was adopted by Congress without criticism.⁵ Evidently, this later recommendation was considered a fine-tuning of the original recommendation by Dahlquist.

Need for similiar coverage for reservists soon became apparent. In a hearing before the House Armed Services Committee in 1955,⁶ it was noted that personnel requirements of the Armed Forces are not static and that reserve personnel could be used on a temporary basis to fill vacancies.

Two excerpts from this hearing follow:

While we need the inherent flexibility which the Reserve element affords, we also need to retain on active duty over extended periods sufficient numbers of these junior officers to provide a balanced officer structure. This means that we must provide reasonable compensation for the individual who serves several years, and is then separated before gaining eligibility for retirement benefits.

The two principal objectives that readjustment pay will accomplish are: first, provide more security for deserving individuals, and second, provide incentive to enable the services to maintain a reasonably stable Reserve element.

. . .

The long-term Reserve officer, with over five years active commissioned service, whom we seek to retain on active duty indefinitely, must be protected against economic dislocation during the critical earning period of his life, principally between the ages of 27 and 40 years of age. Beyond 18 years of service, he is reasonably protected until eligible for retirement. Early release defeats the natural desire for security . . .

So long as our national policy requires, Reserves for augmentation of the Active Forces in peace or war, the provision of compensation to assist them in readjusting to civilian life, during this critical period in their lives, is a justifiable element of the cost of national defense.⁷

First, it must provide decided inducements for the best Reserve officers to remain in the active service following conclusion of their legally obligated service. That is, such officers must be assured that if after extended service, their active-duty career

is terminated prior to qualification for retirement, some financial assistance will be provided to facilitate their conversion to civilian pursuits.

Second, such emolument must provide adequate and just, but not excessive, compensation for those officers who, in fact, are involuntarily released after extended periods of active duty.

Third, it must not be so attractive as to deter Reserve officers from striving for Regular appointments, nor must it influence officers released to inactive duty to terminate their Reserve affiliations.

And last, it must not penalize an officer who received benefits thereunder in the matter of acquiring retirement. It must not permit an officer to receive other emoluments for the same period.

These hearings culminated in legislation⁹ which provided readjustment pay to reserve personnel on active duty for at least five years. It was computed at the rate of $\frac{1}{2}$ of a month's pay per year instead of the rate for regular service personnel of two months per year with a maximum of nine months' pay for 18 years of service. The lesser amount was justified by the fact the reservists, unlike regulars, were entitled to Title 3, retirement pay.¹⁰

In 1962, there were two changes made to readjustment pay. The rate of reserve readjustment pay was increased to two months from $\frac{1}{2}$ of a month's pay per year of active duty to match severance pay for the regular force, and the limitation of \$15,000 was introduced for both regular and reserve forces.¹¹

Added incentive was needed to induce reserve officers to remain on active duty. However Congress believed that an upper limit was needed, approximately the basic pay of a major with over sixteen years of service.

The following excerpt from a Senate Report reflects Congressional intent.

(1) Existing law that provides one-half of one month's basic pay for each year of active duty for a Reserve member released after five years of active duty would be amended by increasing the payment to two months' basic pay.

This increase in readjustment payments is intended to serve as an incentive for a larger number of young officers to agree to remain on active duty beyond their obligated tours of service and to provide more equitable treatment for those long-term reservists who are released to inactive duty before qualifying for the immediate receipt of retired pay. These increased payments are authorized for both commissioned and enlisted members of the reserve components.

(2) The maximum readjustment authorized is two years' basic pay or \$15,000, whichever is the lesser.

The maximum of two years of basic pay applies now to severance payments for Regular officers. The Regular officers who receive these payments for separations other than physical disability ordinarily are in grades not above that of major or the equivalent. Two years' basic pay for a major with 16 years of service for pay purposes is \$14,640. In recognition that, without a monetary limitation, the bill conceivably could authorize a readjustment payment to a Reserve major general with 16 years of service for pay purposes in an amount of \$28,800, the committee has adopted a monetary maximum of \$15,000 because of the view that payments in an amount substantially more than this maximum would be excessive.

To achieve uniformity in provisions applicable to Regular officers and Reserves on this point, the bill amends provisions of law prescribing severance payments for Regular officers on releases other than for physical disability by establishing a maximum of \$15,000 on such payments.¹²

Change one-half month's basic pay to two months' basic pay. - This would give Reserve officers involuntarily released a rate of accrual of severance pay similar to that severance pay received by involuntarily released Regular officers. This provision would also increase by the same rate the readjustment pay presently authorized for enlisted members of the Reserve components who are involuntarily released prior to the completion of an enlistment or who, upon completion thereof, are not permitted to continue on active duty. Notwithstanding the fact that only a few enlisted reservists have received readjustment pay under the existing law, and no increase is anticipated, it is recommended that enlisted personnel continue to be treated in the same manner as Reserve officers with respect to separation payments.

In December 1977, the basic pay for a major (with over 16 years of service) is \$28,350 for two years. The readjustment allowance maximum remains, however, at \$15,000, the figure established in 1962.

REFERENCES

- 1 Department of Defense Third Quadrennial Review of Military Compensation, Military Compensation Background Papers, August 1976, p 226
- 2 61 Stat 795, 809, 811, 906 (1947); PL 80-381
- 3 Hearings before the House Armed Services Committee, subcommittee 1 on HR 2536, 2537, No. 149, (April 1, 1947) p 2595
- 4 This unpublished source is from the Secretary of Defense file at the National Archives, Washington, DC, WDGPA 210 2 (14Jan46). Memorandum for Director, Personnel & Administration Division on "Regular Army Promotion Plan," 19 November 1946, signed by John E. Dahlquist, BG, Chairman, Promotion Board.
- 5 An unpublished paper in the Army library (55.795 "Rational Factors in the Army Promotion System: by LtCol Thomas J. O'Connor, May 1, 1947, pp 58, 67) referred to by John E. Dahlquist as President of the War Department Planning Board and the coordinator of the Army recommendations.
- 6 Hearings before the Committee on Armed Services, House of Representatives on Sundry Legislation affecting the Naval and Military Establishments, 84th Cong., 1st Sess., subcommittee No. 1 on HR 6725 and HR 1516 No. 37 (July 13, 1955) p 4526
- 7 Ibid, p 4529
- 8 Ibid, p 4532
- 9 70 Stat 517 (1956); PL 84-676
- 10 See reference C, p 4527
- 11 76 Stat 120 (1962); PL 87-509
- 12 S. Rpt 1096, 87th Cong., 1st Sess., pp 3, 4 (1961)
- 13 Ibid, p 7

D

19 January 1978

SEPARATION/SEVERANCE PAY - INCOME TAX IMPLICATIONS

Legislative Authority: 26 USC 402 (1976)

Purpose: To describe the existing regulation on the taxability of severance pay as background for an RCSS proposal to exclude separation/severance pay from tax treatment at ordinary income tax rates.

Discussion: Without enactment of new legislation, severance pay (proposed by RCSS as part of its recommended compensation system) would be treated as ordinary income and taxed at ordinary rates, thus significantly reducing the value of the benefit intended by the RCSS proposal. The severance pay recommended by RCSS is for officers or enlisted men who are not selected for continuation in the Guard or Reserve at 10 or 15 year service "gates." For this reason RCSS believes that such severance pay should be considered, for tax purposes, the same as a lump sum distribution from a qualified pension plan, which does receive special tax treatment. Under the Internal Revenue Code (IRC, Title 26 of USC),¹ lump sum distributions are eligible for the highly advantageous tax calculation if all three of the following conditions are met:

- The entire balance of the employee's account is paid.
- The sum is paid within one taxable year.
- The sum is paid because of the employee's death, disability, or other termination of service, or, after he reaches age 59½.

The recipient has a variety of options under the IRC:

- o Allocation of the lump sum distribution between long term capital gains and ordinary income; or
- o ten year averaging; or
- o roll over into an Individual Retirement Account (IRA) or other plan. ²

These options will be discussed on the following pages.

Allocate between long term capital gains and ordinary income.

Under this option the lump sum distribution may include amounts that are not taxable.

- o The non-taxable portions are:
 - Amounts contributed to the plan by the employee, and
 - Net unrealized appreciation of employer securities. (That is, the difference between the current market value and the cost basis of the securities. This amount will be taxed when the securities are sold.)
- o The taxable portion of the distribution, (i.e., the lump sum less the non-taxable) is divided into that subject to capital gain treatment and that subject to 10-year averaging.
 - The capital gain portion is determined by this formula:

$$\text{Total Taxable Distribution} = \frac{\text{Number of Months Prior to 1974}}{\text{Total Months of Participation}} \times \text{Capital Gain}$$

The capital gain portion will be treated at the long term capital gain rate (50 percent of the capital gain) and the 5-year income averaging rule may be used.

o The remainder (total taxable amount less that subject to capital gain), is the ordinary income portion. This ordinary income portion qualifies for the special 10-year averaging formula discussed below in the next option. It is a separate tax calculation.

Ten year averaging for lump sum distributions.

Under this option prior to 1976 only the ordinary income portion qualified for the 10-year averaging tax (i.e., the remainder of the lump sum after being reduced by the non-taxable portion and the capital gains portion). In 1976 and later years the entire lump sum distribution may be treated as ordinary income and thereby qualify for the 10-year averaging tax.

Congress intended to duplicate the tax treatment a lump sum distribution would have received if the monies had remained in the pension fund until the individual's retirement.³ If so, and if the recipient had remained employed until retirement age and lived ten years during which he received his pension, that amount would have been taxed each year at ordinary income tax rates. Congress desired not to introduce any undue complexity and multiple year computations.⁴

Transfer to Individual Retirement Account

The recipient has another option; the whole amount may be placed in an Individual Retirement Account (IRA) within six months after receipt. This defers all income tax until the distribution is taxed as ordinary income when received during retirement.

To summarize, the recipient may:

- o Allocate the lump sum distribution between long term capital gains and non-capital gains. The capital gains amount along with other income for that tax year may be taxed under the 5-year average rule if otherwise qualified. The non-capital gains portion may be taxed under the 10-year average rule; or
- o Beginning in 1976, submit the entire amount to be taxed using the 10-year average rule; or
- o Have the total amount rolled over within six months into an IRA, thereby deferring all tax until distribution at retirement.

The present law applies to pension plans qualified by the IRS. The RCSS proposal on severance pay does not meet the requirements for a qualified plan. Therefore, legislation recommendations to change the title 37 USC to allow severance pay must also include an amendment to the Internal Revenue Code, s.402(e)(4). This amendment would add Reserve Severance Pay as a qualified pension plan for lump sum distribution treatment purposes.

Examples of ten-year averaging tax are attached.

<u>If Severance Pay Is:</u>	<u>Then the Separate Tax on Lump Sum Distribution Would Be*</u>
-----------------------------	---

0 to \$10,000	0
11,000	145
12,000	310
13,000	500
14,000	690
15,000	900
16,000	1,110
17,000	1,350
18,000	1,590
19,000	1,840
20,000	2,090
25,000	3,065
30,000	4,170
35,000	5,420
40,000	6,790
45,000	8,265
50,000	9,840
55,000	11,540
60,000	13,290
65,000	15,215
70,000	23,190
75,000	19,290

* Tax computed at 1977 rates. The amount of tax on Severance Pay as listed in this table would be added to the taxes as computed on other income. 10-year averaging is not necessarily the best alternative, especially for those in higher tax brackets.

REFERENCES

- 1 26 USC 402 (1976); 88 Stat 829, 968-969, 987-992 (1974);
PL 93-406
- 2 26 USC 402 (e) (4) (L); 90 Stat 1520, (1976) s.1512;
PL 94-455
- 3 H.Rpt 807, 93rd Cong., 2d Sess. p 148 (1974)
- 4 Ibid

RCSS
Background Paper

17 January 1978

FIFTEEN POINT CREDIT GRANTED RESERVISTS

Legislative Authority: 10 USC 1332

Purpose: To determine the rationale for the 15 retirement point credit granted the reservist for being a member of a reserve component.

Background: The legislative history of reserve retirement is dealt with in a separate RCSS background paper. This memo, therefore, addresses only the basis for 15 gratuitous points. All retirement points are authorized by Public Law 810, Title III, Section 302, the Army and Air Force Vitalization and Retirement Equalization Act of 1948:

1. One point for each day of active Federal Service or active training duty.
2. One point for each drill or period of equivalent instruction authorized or prescribed by the Secretary of the respective service.

3. A Uniform 15 points credit
for membership in a Reserve component for each year of Federal service other than active Federal service. (Emphasis added)¹

The researchers conducted an extensive and exhaustive research: of Congressional hearings and committee reports; of the 1947 - 1949 files of the Office of the Secretary of Defense, Departments of Army, Navy, and Air Force; of records, for the period, in the National Archives. We determined that there is no document available to explain why 15 was the number of points selected. We then contacted three officials who worked closely with Public Law 810 during its drafting, evolution, and final passage.

They stated they believed they were intimately familiar with the background and purpose of its provisions and, as best they could reconstruct the rationale, the 15 points credit was decided upon as follows:

The 50 point qualification was an arbitrary threshold selected for a "satisfactory year" for purposes of Reserve retirement. Many reservists were members of units with 48 weekly drills and two weeks of scheduled summer camp. Others were members of units which drilled much less but did participate in the two weeks' summer camp.

We recognized that many Reservists would be unable to earn their 50 points by attendance at drills because the requirements of their civilian lives would frequently make this impossible. However, we felt that many would be able to earn a sufficient number of points by attendance at drills plus 15 points if they attended summer training. In the minds of the drafters of the legislation, the new concept of earning points for retirement was predicated on summer training and weekly drills. There was no debate as to the figures used and, to our knowledge, no computations -- at that time -- of the percentage of drill attendance required to achieve a satisfactory year.

When we thought about the new concept of earning points for retirement, we decided as part of the inducement given a Reservist would be to credit him with 15 points for the simple act of allowing his name to be maintained on the roster, thereby subjecting himself to call for active duty; but, importantly, giving him a start toward the earning of his 50 points which would make his year a 'satisfactory year' for retirement.

We chose the 15 points as a figure which had an established significance based on pre-enactment practices as active service credit. For many reservists, the only credit the reservist could receive previous to enactment of the 1948 law, short of extended active duty, was the credit for 15 days of active duty obtained as the result of attendance at the yearly summer camp.

To summarize, those who worked with this legislation knew that point credits were granted on the assumption that most Reservists could earn the necessary points to qualify for a 'satisfactory year' by a combination of attendance at drills and attendance at summer camps. The 15 gratuitous points was simply the number which corresponded with the active service credit a Reservist previously received for time spent on active duty for training.²

REFERENCES

- 1 62 Stat 1082 (1948); PL 80-810
- 2 RCSS memorandum, 5 January 1978, subject: Rationale for the 15 Retirement Point Credit Granted the Reservist for Being a Member of a Reserve Component

May 1978

DESCRIPTION OF THE COMPUTER MODELS
FOR THE
LUMP SUM OPTION
FOR RESERVE RETIREMENT

BACKGROUND

The RCSS recommendations concerning deferred compensation consist of two alternatives. Alternative #1 is the continuation of a modified reserve retirement; Alternative #2 is for "no-retirement." The basic purpose of both alternatives is to shift compensation forward, where manning experience would indicate it is needed.

Currently, there is no provision for either voluntary or involuntary reserve retirement at any time prior to age 60. Officers are separated from active reserve participation by the provisions of the Reserve Officer Personnel Act, but this, in effect, applies only to the more senior officers. There is no similar personnel program in effect for the separation of enlisted personnel.

RCSS has considered the possibility of lowering the retirement age for reserve retirement. However, lowering the age does not change the basic inflexibility of the current retirement system, either from the viewpoint of the government in the management of the force or from the viewpoint of the individual. RCSS

holds the position that the lump sum option provision described in the modified retirement plan (Alternative #1) would provide more flexibility for the government to manage the force and would give the individual the opportunity to tailor his reserve career and entitlement to deferred compensation to his own particular requirements. It was the conclusion of the RCSS that the option of a lump sum payment, in lieu of earlier retirement, would work to the mutual advantage of the government and the reservist.

The RCSS recommends that a lump sum option be made available to reserve retirees, both for members who are eligible under the present retirement plan and are still active in the reserve and those who would be covered by the RCSS modified retirement plan. The decision to select the option would be voluntary on the part of the reservist upon attaining 20 creditable YOS for retirement. The option would be selected by the individual at the time he or she was transferred to the Retired Reserve or ceased participation in the reserve. The option would have to be exercised prior to attainment of age 58. Exercise of the option to receive a lump sum settlement would constitute a waiver of entitlement to any further deferred benefits including health care, survivor benefits, commissary, and exchange privileges.

PURPOSE

The purpose of this paper is to list the facts and assumptions and to describe briefly the programs and data associated with lump sum modeling to allow evaluation and replication of RCSS work. Detailed program descriptions and actual data set extracts used in the modeling are available in the RCSS working papers held in ODASD (RA).

FACTS

- The points accumulated by FY 77 retirees from the Army and the Air Force are based on a random sample for each component.
- The annual point accumulation rate is based on a five-year period during the most recent seven year history from the Army and Air Force samples.
- Retirement ages and relationship of years of service to retirement age are based on the Army sample.
- Mortality rates are taken from the Commissioners 1958 Standard Ordinary Table of Mortality.
- Pay rates are taken from the October 1977 pay table.
- Personnel inventories are based on data from the 30 Sep 77 report of the Reserve Component; Common Personnel Data System (RCCPDS).

ASSUMPTIONS

- Discount rate is 6%.
- Retirement payments are made the first day of the year.
Present value is calculated as of the last day of the year.
- Army National Guard, Army Reserve, and Navy Reserve participation rates are about the same.
- Marine Corps Reserve, Air National Guard, and Air Force Reserve participation rates are about the same.
- Real wage growth is 0 or 1% per year (2 cases).

APL PROGRAMS

General Description of the Programs

The programs predict individual lump sum payments or budget payments for a variety of situations:

- individual cases by actual FY 77 retirement cohort distribution;
- constructed individual cases;
- with or without a real wage growth during the period between retirement and age 60;
- with or without adoption of the RCSS point accrual proposal;
- for an actual, projected, objective, or required inventory;
- for different "eligibility windows".

The Four Specific Programs

- COST produces a five year budget for FY 77 - 81, by component and officer or enlisted status, by YOS, by taker rate, and by present or proposed system for the situation in which only personnel with 20, 25, or 30 YOS may take the lump sum option and the taker rate is all, 5%, 15%, or 25%. The program is adjustable for incorporation or deletion of real wage growth, budgeting for a new five year period, or having an eligibility window of 16 to 30 YOS.
- LIFESTREAM produces multipliers of annual pay entitlements to lump sum payments based on age, discount rate, and inclusion or exclusion of one percent real wage growth.
- TYPICAL produces lump sum payments, cash flows, and differences for individuals in the upper, middle, and lower third of the Army FY 77 retiree accession cohort. The program computes cost data under the present or the RCSS proposal based on active duty assumptions of 120 day, 2 year, 4 year and normal recent historical annual rates. The program is adjustable for any individual case.

- SVC produces a comprehensive analysis of the Army validated retiree sample. REPORT and REPORT2 produce the output from SVC. Output includes: distribution of retirees by grade, frequency (of active duty greater than 29 days per year) in years (prior to 1949); and (after 1949), active duty points by grade, inactive duty points lost by grade, total points by grade, inactive duty points by grade, and creditable YOS by grade.

DESCRIPTION OF THE DATA BASE

There are two samples (one Army and one Air Force) which represent the FY 77 retirement cohort. Because the information is personal in nature, the published data have been "sanitized" to remove personal identification and therefore include only as much data as are necessary to support completed analyses. The complete data, to include the total population and all data transcripts, are available from the ODASD (RA).

Data Samples

- Army sample. The RCPAC file is listed in SSAN sequence. Based on a sample size considered adequate for analysis at the officer/warrant officer/enlisted subpopulation levels, a sample size was chosen so that the records extracted totaled at least twice the square root of the

officer, warrant officer, or enlisted population sizes. The population grade was based on reserve grade-held (which was not necessarily the retirement grade). RCSS regrouped grade-held records to reflect retirement grade samples. All the RCPAC validated records were sent. From the fragmentary evidence available on the unvalidated records the middle third in terms of apparent points earned were individually researched. The Army unvalidated sample was verified against the validated sample for two grades and was sufficiently close not to require additional analysis.

- Air Force sample. The Air Force provided two inputs on the same individuals. Based on the sample size considered adequate for analysis at the FY 77 Air Force cohort population level, RCSS selected a random record sequence from the population file.

Data Groupings

- Five Year Extracts By Grade
 - For calendar years 1971 - 1975 from the validated Army data base, the points accrued by category (inactive duty, correspondence, or active duty) for each individual of the same grade were grouped

to determine a centralized measure of points earned by category and grade.

- There is an inherent data inaccuracy in that the line entries in the RCPAC file capture a given calendar year but the month varies by individual. A particular line entry is generally 12 months long but it can vary from about 9 to 15 months.
- Five Year Averages by Grade
 - The historical average annual point accumulation rate by category (inactive duty, correspondence, or active duty) and grade were computed from the five year extracts by grade.
 - The calculations to average historical point accumulation rates by grade and category were adjusted for inactive personnel by eliminating inactive years.

Retirement Point Distributions

The point distributions were calculated from the entire validated Army data base. The mechanics of the calculations and reports are embedded in the programs SVC, REPORT, and REPORT'.

The categorization of individuals as Reserve or Guard is somewhat arbitrary in that many individuals can cross into either category several times during the same career. The categorization was

based on the predominant component in the latter stages of the individual's career.

Guard/Reserve personnel can earn only up to 60 points per year for inactive duty, correspondence, and membership. Since RCSS was considering the elimination of correspondence points as part of a new point accrual method, RCSS assigned the 60 point "cap" in the following priority:

- membership 15 points;
- inactive duty up to 45 points;
- correspondence up to 45 points, less active duty points.

The types of point distributions are:

- the numbers of individuals by grade and component. Percentage of individuals of a certain grade by officer or enlisted and by component;
- the numbers of individuals by multiples of 250 active duty points by grade and component;
- the numbers of individuals by multiples of 20 inactive duty points lost by grade and component;
- the numbers of individuals by multiples of 20 correspondence points lost by grade and component;
- the numbers of individuals by multiples of 350 total points accrued by grade and component;

- the numbers of individuals by multiples of 360 creditable points accrued by grade and component;
- the numbers of individuals by creditable service years by grade and component.

Three types of values were extracted from the validated Army data base and used in COST or TYPICAL:

- Total Points in YOS Equivalents
 - Total points are the total creditable points accrued by the individual as of retirement. The values for 20, 25, 30 YOS are used in COST. The values for the upper, middle, and lower third retiring medians by officer or enlisted are used in TYPICAL. Actual points divided by 360 are YOS Equivalents.
 - Total points are sensitive to mobilizations and active duty in peacetime.
- Point accrual rates
 - Point accrual rates are the 1971 - 1975 historical point accrual rates under the present system and under the RCSS proposal. Point accrual rates are used in COST.

- Point/YOS/Age Distributions

- COST assumes enlisted retirees are two years younger than officer retirees with the same number of YOS.

This assumption should be updated as follows:

20 YOS	same age
25 YOS	enlisted is one year older
30 YOS	enlisted is one year older

- TYPICAL uses the upper, middle, and lower third YOS/Age distributions as they exist in the FY 77 sample.

This description does not detail the technical analyses performed and was not intended to supply more than a summary of certain economic, actuarial, and programming techniques used in the analysis and development of the lump sum option. The conclusions derived from the modeling efforts are described in Chapter VI, RCSS report.

RCSS
Background Paper

May 1978

MEDICAL BENEFITS FOR RESERVISTS AND THEIR DEPENDENTS

Legislative Authority: 10 USC 3687, 3721 (1976 ed.) for USAR and USANG
10 USC 6148 (1976 ed.) for USNR and USMCR
10 USC 8687, 8721 (1976 ed.) for USAFR and ANG
14 USC 755 (1976 ed.) for USCGR
32 USC 318 (1976 ed.) for the National Guard
38 USC 874 (1976 ed.) for Veterans

Purpose: To set forth the legislative intent in providing medical benefits for reservists and their dependents.

Background: This paper contains four parts:

- I - coverage for reservists (p 1), excluding the Coast Guard;
- II - coverage for Coast Guard reservists (p38);
- III - coverage for dependents of reservists (p46); and
- IV - interservice differences (p59).

PART I - COVERAGE FOR RESERVISTS, EXCLUDING COAST GUARD

Medical benefits for reservists had been received without the support of specific legislation. Certainly, the minutemen at Lexington and other volunteers at Bunker Hill had their wounds tended to. An 1802 statute appears to be the earliest mention of wounds; however, it does not deal with treatment or hospitalization but rather with disability:

...if (any person) in the corps composing the peace establishment shall be

disabled by wounds or otherwise, while
in the line of duty in public service,
...shall...receive an allowance propor-
tionate to the highest disability....¹

The first legislation granting medical benefits to our reserve
forces (or at least their predecessor organizations) came in
1836 with the statement that:

...the volunteer or militia,...
(supressing) Indian depredations in
Florida, shall be entitled to all the
benefits which are conferred on per-
sons wounded or otherwise disabled in
the service of the United States.²

Certainly, the volunteers in the Civil War received no
different medical treatment (howsoever unsophisticated) than
that received by their regular counterparts. At least, that
is an assumption that can be derived from the intent of later
language:

...any...person,...since the fourth
day of March, eighteen hundred and
sixty-one,...disabled by any wound
received or disease contracted while
in the service...and in the line of
duty...entitled to receive...such
pension...as is...provided....³(Emphasis added)

That act was supplemented in an 1864 statute even though
there was no explicit reference to medical or hospitaliza-
tion coverage.

...those persons, not enlisted soldiers
in the army, who volunteered for the time
being to serve with any regularly organized
military or naval force of the United States...
if they have become disabled in consequence
of wounds received in battle, in such temporary
service, be entitled to the same benefits of
the pension laws as those who have been
regularly mustered into the United States
service...

all enlisted soldiers...
...disabled in the service
...shall be entitled to the same benefits of
of the pension laws as those who have been
regularly mustered...⁴

The comparability of benefits for reserves and regulars was
reaffirmed at the time of the Spanish American War even
though there was no mention of medical care per se:

...all officers and enlisted men
of the Volunteer Army, and of the
militia of the States when in the service
of the United States, shall be in all
respects on the same footing as to pay
allowances, and pensions...as...
Regular Army...⁵

It was not until 1903 that the law again specified medical
coverage for reservists:

...when any (person) of the militia
is disabled by reason of wounds or
disabilities received or incurred in
the service of the United States he
shall be entitled to all the benefits
of the pension laws....⁶

Attention must be given to certain general words and phrases
that would have to be defined in order to determine whether
individuals should or should not receive them. For example,
in the quotes above, "wounds" are explicitly taken care of, but
the words "or disabilities" leaves the door open for eligibility
for non-wounds - without specifying "other injuries." The
expression, "disease contracted while in the service," is an impor-
tant one as is "in the line of duty." Refinements cropped up shortly
as in the Army appropriation act of 1909⁷ required that wounds or

disease could "not (be) the result of his own misconduct."
This was copied by the Navy in 1912⁸ and was not repealed
until 1956.⁹ The problems of definition, as the reader will
laboriously begin to appreciate, extend not only to scope
of medical coverage, but for reservists and guardsmen,
when the coverage is applicable, and how and when it may
include dependents.

The birth of military aviation brought along with it the
belief that the fledglings should not only receive an
increase in rank and basic pay, but also special benefits.

...the widow of...any (Army) officer
or enlisted man who shall die as a
result of an aviation accident not
the result of his own misconduct,
(shall receive) an amount equal to
one year's pay....¹⁰

This payment for an aviation accident was in lieu of the six
months' pay death gratuity applicable to non-aviation deaths.

Although the Army has historically led the way with proposals
for medical coverage, in this case, Navy provided the same
"one year's pay" but made it available for "wounds or
diseasereceived while engaged in actual flying or in
handling aircraft..." Furthermore, the Navy specified:

...In all cases where (a man) is
disabled by reason of any injury
received or disease contracted
in line of duty, flying in or in

handling aircraft, the amount of pension shall be double that authorized (in non-aviation)...¹¹

It took the Army 13 years (1929) to get the same double pension for disabilities from aviation.¹²

As the rest of the world became embroiled in World War I, the United States legislature passed the National Defense Act of 1916 which established the Officers' Reserve Corps and the Enlisted Reserve Corps. Such officers

...shall not be entitled to retirement or retired pay and shall be entitled to pension only for disability incurred in the line of duty and while in active service....¹³

The similar provision for enlisted reserves said

...nor shall they be entitled to pensions except for physical disability incurred in the line of duty while in active service or while traveling under orders of competent authority to or from designated places of duty....¹⁴
(Emphasis added)

Later the same year, the Navy Appropriation Act funded the Naval Reserve Force and the Marine Corps Reserve. It reaffirmed that when such reservists were

actively employed (they were) entitled to the same pay, allowances, gratuities, and other emoluments... but when not actively employed (were not....¹⁵

The Act continued to provide for the Naval Militia and the National Naval Volunteers (both officer and enlisted) and restated that when they were

...disabled by reasons of wounds or disabilities received in the active service when called to duty (they were) entitled to all the benefits of the pension laws existing (for Navy or Marine Corps)....¹⁶

In the post-war period there was not any pertinent legislative activity until 1923 when an act was passed to extend medical coverage to the National Guard and to the Army Reserves.

...that officers, warrant officers, and enlisted men of the National Guard injured in line of duty while at encampments, maneuvers, or other exercises, or at service schools,...members of Officers' Reserve Corps and of the Enlisted Reserve Corps of the Army... members of the Reserve Officers' Training Corps...shall be entitled... to medical and hospital treatment at Government expense until they are fit for transportation to their homes and upon termination of such medical and hospital treatment shall be entitled to transportation to their homes at Government expense...those in hospital... while not in receipt of pay...shall be entitled to subsistence at Government expense...¹⁷ (Emphasis added)

The following year, an amendment assured "a continuation of the pay and allowances...until they are fit for transportation to their homes..."¹⁸ (Emphasis added) In 1928, a further amendment stipulated that National Guardsmen"...shall also be entitled to such further medical treatment for such injury or disease...after arrival at their homes..."¹⁹ (Emphasis added)

The special provisions for those injured in aviation-connected incidents were further expanded in 1924 as follows:

... those injured while voluntarily participating in aerial flights in Government-owned aircraft... incident to their military training...entitled...to the same medical and hospital treatment at Government expense, pay and allowances, and transportation to their homes, as if such injury had occurred while on active duty under proper orders. Any person... disabled for more than six months, shall ...be entitled to medical and hospital treatment and to subsistence at Government expense... but...not...to other compensatio.....²⁰

That 1924 amendment introduced a six-month limitation on the continuation of pay.

ROTC members were also authorized transportation home "when fit to travel", after being "injured in line of duty while at camps of instruction."²¹

Strangely enough, the Navy seemed to back-track on its coverage for reservists, in 1925, by arranging to have them covered by an earlier statute that initially applied only to civilian employees of the Federal Government.

...that if in time of peace any officer or enlisted man of the Naval Reserve is physically injured in the line of duty while performing active duty, authorized training duty with or without pay, or when employed in authorized travel to and from such duty, or disabled as the result of such physical injury, he or his beneficiary shall be entitled to all the benefits prescribed by law for civil employees of the United States who are physically injured in the line of duty or who die as a result thereof, and the United States Employees' Compensation Commission shall have jurisdiction in such cases...in no case shall sickness or disease be regarded as an injury....²²
(Emphasis added)

The Employees' Compensation Commission had been established in 1916 to handle claims of civil employees of the United States and the Panama Railroad Company who were injured.

...the United States shall pay compensation...for the disability or death of an employee resulting from a personal injury sustained while in the performance of his duty...during the first three days of disability;...not entitled to compensation....²³

If partially disabled the individual was to receive 66 and 2/3 percent of the difference between his monthly pay and his monthly "wage-earning capacity". If totally disabled the payment would be 66 and 2/3 percent of monthly pay. In any event, the monthly compensation for total disability was not to exceed \$66.67 or be less than \$33.33. Privates had a monthly salary of \$21 and second lieutenants were making \$125 in 1925.

As the reader will see, this ambivalence with regard to reserve coverage will continue in the legislation for many years - often allowing the reservist the option of which coverage he wanted. There is little wonder there has been continuing confusion on entitlements through decades.

Another 1925 act was significant for its first mention of dental benefits, reimbursement of emergency treatment, and hospitalization in other than Government hospitals.²⁴

That last point was picked up and expanded upon in a 1929 act:

patients on the active or retired list and members of Naval Reserve or Marine Corps Reserve entitled to treatment in Naval Hospitals (may be treated) in other Government hospitals when appropriate naval hospitals are not available and...other hospitals consent...²⁵

An early mention of the Veterans Administration's predecessor organization appeared in a 1928 statute applicable to reserves:

all...officers...other than...
Regular Army, Navy or Marine Corps
who...incurred physical disability
in line of duty, and who have been,
...rated at not less than 30 per
centum permanent disability by the
United States Veterans' Bureau for
disability resulting directly from
such war service...shall be entitled
to the same privileges...for officers
of the Regular...who have been retired
for physical disability...and shall be
entitled to all hospitalization
privileges and medical treatment as
...authorized by the United States
Veterans' Bureau....²⁶

The expanding role of the Veterans' Bureau is a subject for this legislative history.

In 1935, legislation was passed to enable recruitment of a new category of military personnel in the Naval and Marine Corps Reserve called aviation cadets. Since many of these cadets were to be minors, a whole panoply of special benefits were set forth in the statute.

...when aviation cadets contract
sickness or disease or suffer
injury in line of duty while per-
forming active duty, they may, in
the discretion of the Secretary of
the Navy, be retained on such
active-duty status beyond the
specified date of termination
thereof.²⁷

Another important piece of legislation that year had as its expressed purpose to provide for "the care and treatment of members of the National Guard, Organized Reserves, ROTC... who were to be:

...entitled to hospitalization at Government expense - but not more than an aggregate of six months after the termination of the prescribed tour of active duty or training...

...when not entitled to pay entitled to subsistence...

...men of the National Guard who suffer personal injury (as distinguished from disease) in line of duty when participating in aerial flights...be entitled to same hospitalization...as if at encampments....²⁸ (Emphasis added)

In 1937, persons were given the option of selecting which benefit they would claim.

...disability;...from personal injury or disease contracted in the line of duty...service...by a Reserve officer or member of the Unlisted Reserves of the United States Army, Navy, or Marine Corps, shall be considered as active service...pension

Where a person...is eligible...for benefits of Employee's Compensation Act, he shall elect which benefit he shall receive....²⁹ (Emphasis added)

The Navy thought it useful to clarify the option in the Naval Reserve Act of 1938.

...he shall elect which benefit he shall receive, and for the

purpose of this...Act all members of the Naval Reserve shall be considered as performing active military or naval service while performing active duty with or without pay, training duty with or without pay, drills, equivalent instruction or duty, appropriate duty, or other prescribed duty, or while performing authorized travel to or from such duties... Reservists so physically injured while...in a nonpay status will be held and considered as receiving pay and allowances they would have received if in a pay status....

The 1938 Act also entitled for the first time

...Naval Reservists who become ill or contract disease in line of duty...shall be entitled, at Government expense, to such medical, hospital, or other treatment as is necessary for the appropriate treatment of such illness or disease until the disabilities resulting...cannot be materially improved by hospitalization or treatment, and to the necessary transportation and subsistence...and return to their homes....

...no treatment or hospitalization for such illness or disease shall be continued for more than ten weeks following discharge from active or training duty except on the approved recommendation of a board of medical survey....³⁰ (Emphasis added)

Lengthy debates in the House during February and March of 1939 dealt with the National Defense Act of 1939. What was surprising was the amount of time devoted and heat generated by discussions on legislating comparability of coverage for reserves for disability (or death) from injury or disease while on active service. (It was here the new threshold of thirty days of active duty was established as the point where comparability would begin. (No statutes could be found that set forth the then-existing threshold. However, a typewritten summary dated 23 September 1955 found in the Legislative History of the Dependents' Medical Care Act of 1956 indicated, without authoritative reference, that the period was 90 days.)

Revealing excerpts Congressional Record follow:

Mr. MAY. In my judgment, there is no sentiment against treating Reserve officers with the same justice as Regular officers; and I am sure every Member of the House Committee will see that a fair hearing is had

Mr. EDMISTON. The bill is going to take care of these men that are cracked up when in training, these 4,300 officers of the Reserve Corps and National Guard, H. R. 3220, is a lot of bunk

It puts an Army officer who is injured under the benefits of the United States Employees' Compensation Commission, and if any of you have ever had a constituent injured on a Federal project and got over 15 cents out of that outfit, I would like to see the record.

The chairman of the Committee on Military Affairs says this will apply to the Marine Corps and Navy. The Marine Corps and Navy already have the benefit. Why take the three main branches of our national defense and treat two of them in one manner and the Army in another?

Mr. MAY. How is he going to find out whether it is bunk or not until we hold hearings on it?

Mr. EDMISTON. I say when any Army officer or enlisted man of the United States is injured in line of duty, or in the service of his country, he should not have to look to the United States Employees' Compensation Commission for compensation for his injury. You are putting him alongside of the fellow who gets hit in the foot with a pick on a W. P. A. ditch

Do you know what their beneficiaries would get under existing law? The most they could get if the officer is killed would be \$45 a month, and the most a widow may get would be \$28 per month.

Let us consider two officers, one a Regular Army officer and one a Reserve officer in the same plane, on the same mission and under the same orders. The plane cracks up and both of them are injured to the same degree. The Regular Army officer is retired for life on two-thirds of the pay of one grade in advance and the fellow officer in the Reserve or in the National Guard flying with him gets what he can out of the Veterans' Administration

Mr. HARTER. As I understand the import of the gentleman's proposition it is to place a Reserve officer who is called into extended active duty in the Air Corps on the same basis of retirement pay that a Regular Army officer draws in case of injury?

Mr. EDMISTON. That is exactly correct. The Army is the only branch of our national defense that does not now enjoy this privilege, and the War Department can give you no argument against this thing. The thing they are afraid of, and I want you to know this, is the cost. They say it will cost \$500,000 the first year. It will not cost them a nickel if they do not crack up the boys or kill them. 31

Mr. CASE of South Dakota. Why should you discriminate between the Reserve officer and the Regular officer who might happen to be injured or killed in the same ship or under the same circumstances?

Mr. THOMASON. I do not draw that line. That is not the issue involved here. I believe the record will show that the Reserve officers do not have a better friend than I.

Mrs. ROGERS of Massachusetts. Mr. Chairman, will the gentlemen yield?

Mr. THOMASON. I yield to the gentlewoman from Massachusetts.

Mrs. ROGERS of Massachusetts. Does not the gentleman believe the Reserve officers should be given added protection? The Regular Army officers are in training every day, all their lives, while the Reserve officers do not have that opportunity of training to protect themselves.

Mr. THOMASON. I agree with you and I favor legislation on the subject, but I believe it ought to be seasoned legislation. Certainly, hearings ought to be had, including all interested parties, the Reserve Officers' Association, the National Guard, the Veterans' Administration, and the War Department, to the end that a bill may be worked out that will be fair not only to the officers who may be injured or killed in service but to the Treasury of the United States.³²

Mr. EDMISTON. I will explain the 30-day provision. That was to take out the Reserve officer who is called into the service for a 2 weeks' training period. This does not apply to him, but when they call upon him for extended duty of 30 days or longer, he goes in on the same basis as a Regular Army officer.³³

Mr. BARKLEY. Let me ask a question. Originally a man had to be in service 90 days before he became entitled to a pension or compensation?

Mr. LOGAN. Yes.

Mr. BARKLEY. That period was reduced to 75 days, and I think that is now the law. If the period has been reduced below that number of days, I do not know it. Does this language mean that these men would be entitled to these privileges after 30 days' service in the Army?

Mr. LOGAN. Oh, no!

Mr. BARKLEY. Does it change the 75-day period?

Mr. LOGAN. What the provision was largely intended for, as I understood, was this: the National Guard is called into active military service once a year, usually for only 15 days; but when its officers are called into active military service at the camps, and serve there for as much as 30 days, and receive injuries, they are entitled to just the same privileges to which Regular Army officers are entitled.

That is about the only thing the provision does. Under the present law National Guard officers are not so entitled, and they do have injuries and deaths, for which they or their dependents receive nothing. This provision was intended largely to take care of Reserve officers who are called into active military service and serve for 30 days in one period, or officers of the National Guard when called into the active military service. There is no provision now by which officers who are called for temporary service may receive anything in case of injury. 34

Mr. BARKLEY. In the case of a war in which the Army is engaged in military activities on the battlefield or in training, is it the law that members of the National Guard of the various States drawn into the United States Army and becoming a part of it are not now entitled or would not be entitled to compensation in case of injury in battle, or their dependents to compensation in case of death in active military service in a war? That is not now the law, as I understand . .

Mr. LOGAN. I am not so sure about that. I cannot answer that question.

Mr. BARKLEY. Of course, as we know, all the National Guard contingents in the country were drawn into the United States Army during the World War

Mr. GEORGE. The whole point of this controversy is the same point that arose when the Senate some years ago established once and for all, I hope, the public policy of regarding our emergency officers as regular officers of the Army if in actual duty, and in line of duty, they suffered a disability which entitled them to retirement benefits. That, Mr. President, as I understand, is the purport of this amendment and is substantially the whole effect of the amendment

Mr. BARKLEY. If such men are entitled to longevity, for instance, because of being in the service for more than 30 days, or if they are entitled to compensation for the loss of a limb in some military activity in these training camps or maneuvers after 30 days, would there really be any equity in denying compensation to a man similarly injured who had been there only 2 weeks and was injured under the same circumstances?
. . . . 35

Mr. CLARK. I stated it was the same old dispute, that there was no dispute between the Senate and the House, but that the War Department is objecting to putting emergency officers, or temporary officers, or reserve officers, or National Guard officers, whatever they may be called, on the same footing with officers of the Regular Establishment when they suffer similar injuries. I would venture the statement on my own responsibility that if the whole charge on the Government by this amendment were transferred from the War Department appropriations to the Veterans' Bureau, the War Department would not be in nearly such great opposition. What I said was that it was a dispute, not between the Senate and the House, but between both the Senate and the House and the War Department.

Mr. BARKLEY. I understand that, but I thought the Senator said that if the administration of the amendment were changed from the War Department to the Veterans' Bureau, the War Department would withdraw its opposition.

Mr. CLARK of Missouri. That was merely an observation.

Mr. BARKLEY. I do not know whether or not the Senator was speaking by the said, but if that be true, and Congress desires to adopt this as a policy for the future, what objection would there be to transferring the administration of the provision to the Veterans' Administration? The Veterans' Administration administers all other pension laws. I am not advocating it, but if that is an objection which would be composed by the transfer, what would be the objection to the transfer? ³⁶

The resulting statute is particularly significant as the first time in which the qualifying period "in excess of 30 days" appears in the statutes, which is still the cut-off period for a reservist on active duty to receive the same full medical entitlements for himself and his dependents as available to his regular counterpart. The new statute provided that

...all officers, warrant officer, and enlisted men of the Army...other than the Regular Army, if called or ordered into the active military service in excess of thirty days, and who suffer disability or death in line of duty from disease or injury...shall be...deemed to have been in the active military service...receive the same pensions, compensation, retirement pay, and hospital benefits...as Regular Army....³⁷(Emphasis added)

It was some 18 months later the Navy adopted almost identical language to cover Navy and Marine Corps reservists.

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The confusion on coverage and applicability of benefits military/civilian may not have been as great then as it appears to this researcher, but, President Roosevelt's Executive Order 8099, in 1939, got the nine-year old Veterans' Administration into the act too. The Veterans' Administration had been established in 1930³⁸ by consolidating the United States Veterans' Bureau, the Bureau of Pensions, and the National Home for Disabled Volunteer Soldiers without any new role being authorized. The Executive Order vested with the VA the responsibility for administration and payment of benefits, except that

...administration of the retirement provisions...(and) determination whether disability exists and whether such disability was incurred in the line of duty shall be made by the Secretary of War...in accordance with the standards...for Regular Army personnel...³⁹

Two acts were passed the same day, the first of which amended the 1936 statute on reserve and Guard coverage. The act directed the Secretary of War:

...to require the hospitalization and medical treatment of persons in the active military service, and to incur obligations with respect thereto, without reference to their line-of-duty status...this Act shall not apply to...men who are treated in private hospitals or by civilian physicians while on furloughs or leaves of absence in excess of twenty-four hours... (Emphasis added)⁴⁰

The second act extended the benefits of the U.S.

Employees' Compensation Act to members of the Officers' Reserve Corps and Enlisted Reserve Corps of the Army.

...any member physically injured in line of duty

- (1) while on active duty
- (2) when in authorized travel to and from
- (3) when in authorized training without pay* or dies as a result..."

...entitled to all the benefits prescribed by law for civil employees... (under) U.S. Employees' Compensation Commission...

...sickness or disease disability or death in line of duty while on active duty...

...individual can elect compensation or if eligible. Those physically injured - held and considered as receiving pay and allowances ⁴¹

Reserve Officers eligible under the active duty "in excess of 30 days" provision of the act passed three months earlier were not eligible here.

The Military Appropriation Act of 1941, passed in June 1940, provided funds

...for medical care and treatment of patients, including supernumeraries, not otherwise provided for, including care and subsistence in private hospitals of officers, enlisted men,...provided, that this shall not apply to officers and enlisted men who are treated in private hospitals or by civilian physicians while on furloughs or leaves of absence in excess of twenty-four hours:....⁴²

*Authorized training without pay is defined as inactive-status training under written authorization by competent military authority.

A month later, another act elaborated upon the year-earlier extension of benefits of the United States Employees' Compensation Act to members of the Officers' Reserve Corps and the Enlisted Reserve Corps who were physically injured in line of duty (in peacetime):

...(1) while on active duty, or (2) while engaged in authorized travel to and from such duty, or (3) while engaged in authorized training without pay, or dies or has died as the result of such physical injury....

...where such injury has resulted in permanent partial or permanent total disability he or his beneficiary shall be entitled to all the benefits prescribed...(by) the United States Employees' Compensation Commission....

...the benefits shall accrue to such member, or his beneficiary, whether the disability or death is the result of sickness or disease contracted in line of duty while on active duty when such sickness or disease is proximately caused by service on active duty:

...authorized training without pay is defined as inactive-status training under written authorization by competent military authority covering a specific training assignment and prescribing a time limit:

Provided further, That for the purpose of determining benefits to which entitled under the provisions of this Act members of the Officers' Reserve Corps or of the Enlisted Reserve Corps of the Army physically injured when engaged in authorized training without pay will be held and considered as receiving the pay and allowances they would have received if in a pay status:

...and any benefits payable shall date only from such approval and the eight-year period of limitation in section 10-G of the Federal Employees' Compensation Act of September 7, 1916, shall be computed for purposes of this Act from the date of approval thereof.

Where injury or death has been sustained by any member of the Officers' Reserve Corps or Enlisted Reserve Corps while performing authorized training without pay upon inactive status it shall be presumed that such training was being performed under written authorization of competent military authority covering a specific training assignment and prescribing a time limit and thus subject to the provision of this Act unless a duly appointed Examining Board, appointed at the time of said accident, has found and reported to the contrary.

All claims for disability or death benefits allowed under the provisions of this Act shall be made within one year from its approval by the President.⁴³

This Act was followed by the Naval Aviation Personnel Act of 1940 which specified that

All (members) of the Naval or Marine Reserve who, if called or ordered into ...service in excess of thirty days, suffer disability or death in line of duty from disease or injury...(are entitled to receive the same pension, compensation, retirement pay, and hospital benefits as (persons) of the Regular Navy or Marine Corps...⁴⁴

This gave equivalent treatment as that provided the Army 18 months earlier. Two years later it was made effective September 8, 1939.⁴⁵

The Selective Training and Service Act of 1940 made clear that full benefit eligibility for "persons in military service" were applicable to

persons inducted...and all members of any reserve component of such forces now or hereafter on active duty for a period of more than one month;....⁴⁶

The Act of October 14, 1940, reported the Act of July 15, 1939:

...the Secretary of War...(may)... require the hospitalization medical and surgical treatment and domiciliary care so long as any or all are necessary of persons in the active military service or on active duty, or in training under provisions of Section 92, 94, 97, 99, and 113 of the National Defense Act of June 3, 1910, as amended, and to incur obligations with respect thereto, without reference to their line-of-duty status: Provided, That this Act shall not include those individuals who are on armory-drill status except officers, warrant officers, and enlisted men of the National Guard who suffer personal injury (as distinguished from disease) when participating in aerial flights prescribed under the provisions of Section 92: And provided further, That this Act shall not apply to officers and enlisted men who are treated in private hospitals or by civilian physicians while on furloughs or leaves of absence in excess of twenty-four hours.⁴⁷(Emphasis added)

In September 1941, as America's involvement in the War became imminent, it was reaffirmed that

...Reserve officers, Army of the United States,...(on) extended military service in excess of thirty days on or subsequent to February 28, 1925,...who are now disabled from disease or injury contracted or received in line of duty while so employed, shall be deemed to have been in the active military service ...entitled to receive the same retirement pay and hospital benefits as...for officers...of the Regular Army....⁴⁸

Apparently the moral obligation to provide medical coverage for recruits in the time period after being accepted for enlistment and before being enrolled required a new statute that

...(a person who shall) "suffer an injury or a disease in line of duty and not the result of his own misconduct will be considered to have incurred such disability in active military or naval service...."⁴⁹

The post World War concern was for clear statements of eligibility for certain benefits. An August 1946 statute (made retro-active to 1 December 1945) included the provision that

...any member of the Naval Reserve performing active duty...for periods of thirty days or less...prior to the official termination of World War II, shall be entitled to all the benefits provided by this section to members of the Naval Reserve in time of peace....⁵⁰

Another retroactive entitlement in June 1948 amended a 1936 law to cover medical treatment for National Guard and Reserves in the period from September 8, 1945 until one day prior to the official termination of the war.⁵¹

Questions of equity, or the need to remove perceived inequities appear to underlie much Congressional action.

Such action was certainly characterized by the passage of the Act of May 24, 1948. Naval officers on leave status could not be reimbursed for medical expenses.⁵²

An 1870 statute had excluded reimbursement.

...expenses incurred by any officer of the navy for medicines and medical attendance shall not be allowed, unless they were incurred when he was on duty, and the medicines could not have been obtained from naval supplies, or the attendance of a naval medical officer could not have been had;....⁵³

The inequity was removed:

The Secretary of the Navy is authorized ...to (reimburse) persons in the Naval service for the cost of emergency or necessary medical services, including hospital service and medicines, from civilian sources when the person receiving the service is in a duty

status: Provided...no medical service was available from a Federal source.

...For the purpose of this Act a person shall be regarded as in a duty status in the naval service while on authorized liberty or leave.⁵⁴

The year 1949 was a very active year, at least in terms of legislation applicable to Reserves. Mrs. Smith of Maine introduced an important bill explaining that her bill (S 213) was designed

to give the same disability coverage to reservists and national guardists injured or killed while serving their country in peacetime as the Regulars now enjoy. Under present law they are not accorded the same protection that Regulars receive unless they are on active duty orders for more than 30 days...⁵⁵

Congressman Van Zandt of Pennsylvania (who had introduced companion bill, HR 564) pleaded its necessity because

...training within the Reserves and National Guard is much more hazardous and exacting than it was in prewar days... there were 33 deaths in 1948...as a result of (military) plane crashes...

Mr. Van Zandt explained that the proposed law would cover more than one thousand beneficiaries who would not otherwise be covered. Since the end of World War II (14 August 1945), about that number of reservists had been killed and injured:

Reservists Killed or Injured from 1945 - 1949

	KILLED	INJURED
Army	35	660
AF	135	35
NAVMC	113	98

The provisions were estimated to cost \$720,000 for their retroactive features and \$850,000 annually thereafter. The major appeal made was that persons who left the Regulars and went into the Reserves assumed they had the same coverage. The growing knowledge that such coverage did not exist was said to be having an adverse effect on the Reserve programs.⁵⁶

Congressional efforts were successful and resulted in the Act of June 1949. This made retroactive to August 14, 1945 the provision that

members of the reserve components of the Armed Forces who suffered disability or death from injuries incurred while engaged in active duty training for periods of less than thirty days or while engaged in inactive duty training ...shall be deemed to have been in the active Naval service....⁵⁷ (Emphasis added)

Margaret Chase Smith's bill (S. 213) became law.

Its salient features are perhaps best described in these paragraphs:

...will cover Reserve personnel suffering death or disability as the result of injuries received in the line of duty for all periods of inactive-duty training, including drills as well as active-duty training periods of less than 30 days' duration. It will also cover training duty injuries regardless of whether the individual is serving with or without pay. In either case, where an injury is incurred involving hospitalization, the reservist concerned will be entitled to receive full active-duty pay and allowances during the hospitalization period.

...extend to Reserves on short training periods the following benefits: Hospitalization with active duty pay, retirement pay where disability retirement is warranted, and payment to beneficiaries of the 6-months death gratuity where death results from injury.⁵⁰ (Emphasis added)

In October 1949, the Career Compensation Act was passed.

It brought a complete revision to the concept of disability payments by relating the level of payment more closely to the extent of disability. It also brought consistency to the treatment of officers and enlisted. It did, however, introduce an 8 year qualification into the evaluation of

the individual's disability. With less than 8 years of service the individual's disability must be "the proximate result of the performance of active duty" while if the individual had more than 8 years of service the disability need only to have been "incurred while entitled to receive basic pay."⁵⁹

It also made clear that any member of a reserve component

...entitled to receive basic pay who has been called or ordered to extended active duty for a period in excess of thirty days is unfit to perform the duties..by reason of physical disability...(can) receive disability retirement pay...⁶⁰

Nevertheless, the Act continued to allow those eligible under this Act and under the Employees' Compensation Act (including Reservists) to have a choice of which disability benefits they wanted to receive.

...The very nature of their military duties denies service personnel any freedom of choice as to the job they perform. For this reason the normal "employees' compensation" concept is too restrictive to permit its rigid application to the uniformed services.⁶¹

A few days later, the Federal Employees' Compensation Act of September 1916 was amended to make its disability benefits more realistic in terms of going wage rates. The minimum monthly benefit for total disability was raised from \$58.33 to \$112.50 and the maximum monthly benefit was bounced from \$116.66 to \$525.⁶²

Obviously, the previous payments had been totally inadequate for some time. The combination of inflation and Congressional neglect had certainly worked severe hardships on thousands of disabled persons over the decades since the disability payment rates had been adjusted. The estimate was that 80,000 Federal civilians suffer accidents and 11,000 were disabled or killed each year. (It is not known how many of these were reservists or other military persons who elected to accept coverage under that Act in preference to military or VA disability coverage.)⁶³ The new payments were an attempt to bring Federal practice into line with many state workmens' compensation laws. President Truman found it necessary to issue an Executive Order to help explain the election of disability retirement pay or disability severance pay as described in the Career Compensation Act.⁶⁴

About a year after the Korean War started, the Servicemen's Indemnity Act provided, among other benefits, \$10,000 of free life insurance for anyone in active service including Guardsmen and reservists on active duty of 14 days or more as well as for those reservists "engaged in aerial flights...with or without pay..." ⁶⁵

This statute was followed almost immediately by one that authorized medical and hospital care and burial benefits for any person in the Korean War. ⁶⁶

In the Armed Forces Reserve Act of 1952, the principle was established that

all laws applicable to make officers
of Reserve, applicable to female
Reserve... ⁶⁷

The post-Korea period, with its growing threat of nuclear holocaust, build-up of Russian armies, launching of Sputnik, was a period of considerable Congressional activity on matters relating to reserve strength.

An amendment to the Armed Forces Reserve Act of 1952 corrected the limitation of existing law (Mrs. Smith's S.213, 81st Cong.) by which reservists performing active duty for training were not covered if they incurred a disease - regardless of the duration of their orders to active duty for training. Members of the National Guard apparently already had disease coverage under sections of the National Defense Act related to State as opposed to Federal or reserve component status. ⁶⁸

The April 1956 law legislated that

...any person called or ordered to perform a period of active duty for training in excess of thirty days... shall...be deemed to have been on active naval or military service... for the purpose of determining eligibility for any benefit prescribed under (63 Stat 201).....⁶⁹ (Emphasis added)

The Servicemen's and Veterans' Survivor Benefits Act of 1956 expanded on that for

...all members of the Naval Reserve shall be considered as performing active military or naval service when injured while performing active duty with or without pay, drills, equivalent instruction or duty, appropriate duty, or other prescribed duty or while performing authorized travel to or from such duties...⁷⁰

The Act extended new coverage for death resulting from injury of the reservist or guardsmen while traveling directly to or from training and drills. It also extended coverage to guardsmen dying from disease incurred on active duty training of less than 30 days. Such coverage had been limited to death from injury. ⁷¹

The enactment of Title 10 of the US Code in 1956 consolidated the law. There, the entitlements were spelled out in language that remains close to what it is today:

A member of the Army: other than the Regular Army, is entitled to the hospital benefits provided by law or regulation for a member of the Regular Army of corresponding grade and length of service, whenever -

- (1) he is called or ordered to active duty for a period of more than 30 days, and is disabled in line of duty from disease while so employed; or
- (2) he is called or ordered to active duty, or to perform inactive-duty training, for any period of time, and is disabled in line of duty from injury while so employed.⁷²

The following year, an Act consolidated, simplified, and made more uniform the laws relating to compensation, pension, hospitalization, and burial benefits.⁷³ It repealed all or portions of hundreds of laws including that portion of the 1919 Act relating to double pensions for Navy/Marine aviation deaths or disabilities. Title 38, Veterans' Benefits was revised the following year.⁷⁴

Another maintenance and housekeeping Act was that of September 1958. This cleaned up some leftovers in Title 10, and also spruced up Title 14 (Coast Guard) and Title 32 (National Guard).

Its objective was:

...to create and maintain high morale in the uniformed services by providing an improved and uniform program of medical and dental care for members and certain former members of those services, and for their dependents....

...except a member or former member who is entitled to retired pay under Chapter 67 of this title and has served less than eight years on active duty (other than for training), may upon request, be given medical and dental care...⁷⁵

That statute also reaffirmed that when hospitalized an officer or former officer would not receive free meals, but would have to pay an amount equal to the charge for daily subsistence.

During the Vietnam war a practical accommodation stipulated that persons (officers) being medically evacuated on military aircraft no longer had to pay for their meals on board.⁷⁶

With an increasing number of former military living and working overseas, pressure kept building to extend medical care to cover that population that would have been eligible within the U.S.

...The (VA) Administrator may furnish necessary hospital care and medical services to any otherwise eligible veteran for any service-connected disability if the veteran (1) is a citizen of the United States temporarily sojourning or residing abroad, or (2) is in the Republic of the Philippines.⁷⁷

This was followed by another statute designed to place war and non-war veterans with service-connected disabilities on parity for VA hospitals or outpatient treatment.⁷⁸ It also authorized hospital and medical care for

... any veteran for a service-connected disability; or a veteran of any war for a non-service connected disability if he is unable to defray the expense of necessary hospital care...

...In the case of any veteran discharged or released from the active military, naval, or air service for a disability incurred or aggravated in line of duty, such services may be so furnished for that disability, whether or not service connected...⁷⁹

A 1944 statute (see reference 49) had provided medical benefit coverage for the grey area between the time the individual enlisted and actually started active duty. In 1954, coverage was provided for those disabled before reporting for induction.⁸⁰

It was not until 1961 that a termination point for benefit eligibility was determined. That statute extended coverage from time of discharge through the time to get home "by the most direct route" at least through midnight of the date of discharge or release.⁸¹

This concludes the legislative history of medical coverage for the Guard and Reserve through February 1978. The following section sets forth the legislative history of medical coverage for the Coast Guard Reserve.

PART II - MEDICAL COVERAGE FOR COAST GUARD RESERVISTS

In 1894 Coast Guard personnel were first authorized the use of what is today Public Health Service Hospitals:

...admission to and temporary treatment in the marine hospitals under the control of the Government of the United States be...extended to the keepers and crews of the Life-Saving Service under the same rules as those governing sailors and seamen...of American registered vessels; but this Act shall not be so constructed as to compel the establishment of hospitals or dispensaries for the benefit of said keepers and crews, nor as establishing a home for the same when permanently disabled.¹

And, in 1895

...the President...to convene a board...of three surgeons of the Marine Hospital Service, to examine and report on all officers now in the Revenue-Cutter Service who, through no vicious habits of their own, are now incapacitated by reason of the infirmities of age or physical or mental disability.

...(to receive) one-half active duty pay...²

In February 1941, the United States Coast Guard Reserve, as

we know it today, was established.* Members of the Reserve

...when engaged on active duty,
or on active duty while undergoing
training, or when engaged in authorized
travel to or from such duty, shall
receive the same pay and allowances
as...the regular Coast Guard...

however,

Members of the Reserve,...who suffer
sickness, disease, disability, or
death in line of duty shall be
entitled to the same benefits as
...Naval Reserve....³

In contrast, those members of the Coast Guard Reserve called
"temporary members", i.e. those who were owners or crew
members of motor boats or yachts placed at the disposal of
the Coast Guard, if physically injured

...shall be entitled to all the
benefits...for civil employees...
(under) the United States Employees'
Compensation Commission....

but, those temporary members

...who contract disease while
performing active duty shall be
entitled to the same hospital
treatment as...members of the
regular Coast Guard....⁴

* A June 1939 law had established "a Coast Guard Reserve
to be composed of owners of motorboats and yachts" but
it was in reality the Coast Guard Auxiliary of today.
The "Coast Guard Auxiliary" and the "Coast Guard Reserve"
were properly identified in the 1941 law.

In 1942, members of the Coast Guard's Women's Reserve were specifically denied the benefits of reserves authorized in 1941 and instead were limited to "the same benefits as are provided for temporary members of the Reserve...", in the 1941 law.⁵

The Act of July 1, 1944 made specific the medical support role of the Public Health Service in behalf of the Coast Guard.

...Regular and temporary members of the United States Coast Guard Reserve when on active duty or when retired for disability;... shall be entitled to medical, surgical, and dental treatment and hospitalization by the Service (i.e., the PHS)....

While considering a 1944 bill to consolidate and revise laws pertaining to the Public Health Service, the House Committee on Interstate and Foreign Commerce stated its intention to

...make clear that the Public Health Service is to supply what is virtually a medical corps of the Coast Guard, not only serving the sick and disabled but also furnishing ancillary services such as medical examinations for the purposes of appointment, retirement, and the like.... (Emphasis added)⁷

The 1944 Act included mention of benefits for female reservists in the Coast Guard but qualified it heavily.

...members of the Women's Reserve of the Coast Guard, or their dependents, shall be entitled to the benefits provided by Section 326 (above) for male officers and enlisted men of the Coast Guard or their dependents: Provided, That the husbands of such members shall not be considered dependents, and the children of such members shall not be considered dependents unless their father is dead or they are in fact dependent on their mother for their chief support

The 1944 Act also authorized benefits for members of the Coast Guard Auxiliary. This entitlement was needed because

Members of the Auxiliary, when assigned to specific duties as herein authorized shall...be vested with the same power and authority...as members of the regular Coast....

When any member of the Auxiliary is physically injured or dies as a result of physical injury incurred while performing any specific duty to which he has been assigned by competent Coast Guard authority, such member or his beneficiary shall be entitled to the same benefits provided for temporary members of the Reserve....

Members of the Auxiliary who...contract sickness or disease while performing any specific duty to which they have been assigned by competent Coast Guard authority shall be entitled to the same hospital treatment afforded officers and enlisted men of the Coast Guard. 9

In the 1970's, with growing pressures on the HEW Budget, it seemed to be increasingly difficult for the expanding

Coast Guard to get the desired level of medical service with the funds made available to the Public Health Service by the Medical Services Administration of the Department of Health, Education and Welfare. Apparently, the ultimate goal of PHS is to withdraw from its direct patient care activities over a period of time.

One step in the direction of securing better care for Coast Guardsmen was reached in a Memorandum of Agreement with the Coast Guard effective 1 October 1976.¹⁰ The effect is to have the Coast Guard budget for its own medical care and reimburse PHS for services provided. The HEW budget thereby would be reduced while that of the Department of Transportation, for the Coast Guard, would be increased to reflect more accurately costs of operation.

The current issue of the Coast Guard Administrative Manual has only half a page devoted to "Rights and Benefits" of reservists. Two of the paragraphs read as follows:

9-5-1 Benefits for Reservists on Extended Active Duty. In general, the death, disability retirement, severance, hospital and survivors benefits accorded to reservists serving on extended active duty are the same as provided by law for Regulars.

9-5-2 Benefits for Reservists Not on Extended Active duty. A reservists should be made aware that certain rights and benefits which accrue to reservist serving on ACDUTRA and inactive duty training are somewhat less than those accruing to reservists serving on extended active duty. Some instances are as follows:

- (1) Reservists serving on ACDUTRA or on inactive duty training do not qualify for all the disability and retirement benefits as are provided for reservists on extended active duty.
- (2) Entitlement to annual leave accrues only when ACDUTRA orders with pay are for a continuous period of 30 days or more.
- (3) Mustering out pay is not authorized.
- (4) Eligibility for dependents' allowances are in accordance with Volume II of the CG Comptroller Manual (CG264). Such allowances are payable only to eligible personnel performing ACDUTRA, and only in the amounts specified by law for the Reserve category to which assigned.¹¹

The four examples do not include any on hospitalization or medical benefits.

The Coast Guard Medical Manual has a Section B "Medical Care for Reserve Personnel". It states

- (d) Injury Incurred in Line of Duty
A member of the Coast Guard Reserve who is ordered to active duty or to active/duty for training, or to perform inactive duty training, for any period of time, and

is disabled in line of duty from injury while so employed, is entitled to the same hospital benefits as provided by law or regulation in the case of a member of the regular Navy or the regular Coast Guard.

(e) Disease Incurred in Line of Duty While on Active Duty. A member of the Coast Guard reserve who is ordered to active duty or active duty for training for a period of more than 30 days, and is disabled while so employed, is entitled to the same hospital benefits as are provided by law or regulation in the case of a member of the regular Navy or the regular Coast Guard.

(f) Illness or Disease Contracted in Line of Duty in Peacetime. A member of the Coast Guard reserve who, in time of peace, becomes ill or contracts a disease in line of duty while on active duty for training or performing inactive duty training is entitled to receive medical, hospital, and other treatment appropriate for that illness or disease. The treatment shall be continued until the disability resulting from the illness or disease cannot be materially improved by further treatment. Such member is also entitled to necessary transportation and subsistence incident to treatment and return to his/her home upon discharge from treatment. The treatment may not extend beyond 10 weeks after the member is released from active duty....

(g) Injury or Disease En Route to or From Active Duty. A member of the Coast Guard reserve is authorized medical care for an injury or disease incurred while enroute to or from active duty or active duty for training.¹²

In summary, medical coverage provisions for Coast Guard reservists are substantially those available to Navy reservists. This point was repeatedly expressed to the author in interviews with officers of the Medical Department of the Coast Guard. However, it appears clear from the Coast Guard manual cited above that coverage is substantially that available to personnel of the regular Coast Guard or regular Navy, not the Naval Reserve. The manual provides benefits while on inactive duty training; the legal authority for this entitlement cannot be found.

The next section describes the legislative history of medical coverage for dependents.

PART III - MEDICAL COVERAGE FOR DEPENDENTS OF RESERVISTS

As early as 1884, medical support for dependents (of active duty personnel only) appeared in the Army Appropriation Act that included the proviso:

. . . the medical officers of the Army
and contract surgeons shall whenever
practicable attend the families of the
officers and soldiers free of charge . . . ¹

Curiously, almost 60 years passed before military dependents were again mentioned. It occurred in the 1943 appropriation of \$2 million to expand Navy medical facilities for hospitalization of dependents of Navy and Marine Corps personnel and to serve dependents of the Coast Guard when it was operating as part of the Navy. It was much more limited than the Army Act.

It specified that

hospitalization of dependents . . .
at any naval hospital . . . (would be)
paid for at such per diem rates as may be
prescribed . . . by the President.
Hospitalization . . . shall be furnished
only for acute medical and surgical
conditions, exclusive of nervous, mental
or contagious diseases or those requiring
domiciliary care. Dental treatment shall
be administered only as an adjunct to
in-patient hospital care . . .²

The Air Force derived its authority from the basic 1884 Army statute.,

Since that time, however, legislative concern for military dependents has been a continuing if not constant subject of Congressional attention. In part this can be explained by the national (and perhaps natural) concern of the employer for the employee, extended to employee's dependents. Certainly, the pattern in industry has been for a benefit introduced for employees to be extended subsequently to their families. Typically, the process has been one in which initially the employer and employee shared the cost of employee coverage. Then, for competitive reasons, or through tough negotiation, or a combination of reasons, the employee's share of the cost diminished and in some cases disappeared. Subsequently, and frequently simultaneously, the benefit was extended to the employee's dependents at full personal cost to the employee: but gradually, even that cost became shared. Today, in some of the most generous commercial organizations many dependent benefits are completely paid by the company. In any event, such benefits are regarded as a fundamental part of the total compensation package of the employee and are carefully costed out to keep total manpower costs for the organization in line.

In one of the periodic assessments of Federal Government policies and practices the 1949 Hoover Commission looked at Federal medical activities. The Commission found that, "Over 40 Government agencies render Federal Medical Service"³and that

...More than half the departments and agencies of the Federal Government conduct medical or health activities.... They compete with each other for scarce personnel. No one has responsibility for an over-all plan. There is not even a clear definition of the classes of beneficiaries for whom care is to be planned.⁴

With reference to the 1884 act (23 Stat 112) the Commission wrote:

On the basis of this act, some 900,000 dependents of Army and Air Force personnel are receiving, or are considered eligible for, substantially full medical care. Congress has supported this practice by appropriations year after year.⁵

The Commission recommended that:

A single policy for dependents of armed forces personnel should apply to all three services.

...Congress should define the beneficiaries entitled to medical care from the Government and prescribe how this care should be given.⁶

On April 1, 1953, the Secretary of Defense established a Citizens Advisory Commission on Medical Care for Dependents of Military Personnel.⁷ The work of that group led ultimately to the landmark Dependents' Medical Care Act of 1956. The hearings of the House Armed Services Committee give one a feeling for the attempts to integrate the various elements of a military benefits package. In the Hearings, reference was made to "three legs of a stool," with the first leg as the Career Incentive Act (69 Stat 18); the second leg, the survivor benefits bill (that was to become 70 Stat 883 later that year); and the third leg, the bill under discussion - dependents medical care.⁸

One argument made in behalf of expanding medical care for dependents was that it would provide a more balanced medical practice for military physicians and thereby improve their attraction and retention:

...retention of a substantial amount of dependent medical care in facilities under the jurisdiction of the uniformed services is absolutely indispensable if we expect to maintain any semblance of a career medical corps...

The more traditional arguments for improving military benefits were also made here.

The statutory basis for dependent medical care was fragmentary, to say the least. It was not surprising, therefore, that differences existed among the services. For example, in those lengthy periods when the Coast Guard was not operating as part of the Navy, Coast Guard dependents could receive free treatment only at Public Health Service facilities. The Navy did not treat dependents who had contagious diseases - the Army did; the Navy did not provide hospitalization for nervous or mental disease - the Army did.

The most significant aspect of the 1956 Act was that it provided a uniform statutory basis for furnishing medical care to dependents (of active duty members). It set forth eligibility and types of care that would be provided in the medical facilities of the uniformed services. In accepting uniformity some services had to give up some phases of medical and dental entitlements.¹⁰

The purpose was to motivate people to elect a military career.

Eligibility was extended to: dependents of service members (including reservists) on active duty for training whose orders did not specify 30 days or less (eligibility of dependents would terminate when active duty ended); dependents of members (including those of reservists) who died while on

such active duty; and dependents of retired members and those who died while retired members (including dependents of reservists retired under Title III).¹¹

Some excerpts from the Dependents' Medical Care Act of particular significance to reservists are as follows:

The purpose of this Act is to create and maintain high morale throughout the uniformed services by providing an improved program of medical care for members of the uniformed services and their dependents.

(Among the dependents eligible for medical care are those of members of a uniformed service) "serving on active duty or active duty for training pursuant to a call or order that does not specify a period of thirty days or less.

(3) The term "retired member of a uniformed service" means a member or former member of a uniformed service who is entitled to retire, retirement, or retainer pay or equivalent pay as a result of service in a uniformed service, other than a member or former member entitled to retired or retirement pay under title III of the Army and Air Force Vitalization and Retirement Equalization Act of 1948 who has served less than eight years of active duty as defined in section 101 (b) of the Armed Forces Reserve Act of 1952.

Sec. 103. (a) Whenever, requested, medical care shall be given dependents of members of a uniformed service, and dependents of persons who died while a member of a uniformed service, in medical facilities of the uniformed services subject to the availability of space, facilities, and the capabilities of the medical staff. Any determination made by the medical officer or contract surgeon in charge, or his designee, as to availability of space, facilities, and capabilities of the medical staff, shall be conclusive. The medical care of such dependents provided for in medical facilities of the uniformed services shall in no way interfere with the primary mission of those facilities.

Commissioned officers and warrant officers, active and retired shall pay an amount equal to the portion of the charge...attributable to subsistence when hospitalized. (Emphasis added)¹²

A minor amendment to the Dependents' Medical Care Act in 1965 provided for transportation of dependent patients from overseas locations to places where adequate medical care would be available.¹³

Almost exactly ten years after the landmark legislation for Dependents' Medical Care in June of 1956 came the Military Medical Benefits Amendments of 1966.¹⁴ With a ten-year track record to go on, Congress was able to do

more than just some fine-tuning. One needs also to remember that the Vietnam conflict was in full swing at that time. The Guard and Reserves were still an attractive refuge from active duty so the pressures on Congress were largely those to make active service more appealing.

Congressman Hébert of Louisiana maintained that medical benefits had been frozen at the 1956 level and that the new bill was important for the "enhancement of morale of our military families at a time when their men are serving in mortal combat in Vietnam."¹⁵

The Act expanded the definition of dependent:

...A dependent of a member or former member who is, or was at the time of his death, entitled to retired or retainer pay, or equivalent pay, may, upon request, be given the medical and dental care prescribed...subject to the availability...of facilities...and staff....¹⁶

The idea, as expressed by Mr. Smith of California, was that "all who are qualified should be able to receive medical treatment."¹⁷

With regard to reservists, there was a big struggle over coverage for retirees. The Senate version of the bill continued to exclude those Title III reserve retirees who did not have eight or more years of active duty. Mr. Hébert pointed out that the House committee "could find no rationale for the

8-years limitation and thus extended coverage under the new program to all Reserve retirees".¹⁸

The House Conference Report No. 2064 reported

The Department of Defense estimates that this action will provide coverage to an estimated 4,630 reservists at a first full fiscal year cost of approximately \$700,000 annually as the bill was finally agreed to.¹⁹

Mr. Bray of Indiana assured Congress that

this will boost the morale of the dedicated reservists who have been so buffeted about by the flip-flop decisions of the Department of Defense....²⁰

Mr. Rivers of South Carolina contributed his views in pushing for acceptance of the bill.

...we have established the rule that military pay will not fall behind civil service pay again...we are making sure that the medical care available to dependents of military personnel shall be equal to the medical care provided civilian Government employees....²¹

Mr. Cubser of California, quoted from a booklet published by the Fleet Reserve Association:

What the serviceman, active and retired, wants is not just to get a benefit, but to be assured that he will continue to get it.²²

It had long been the practice for military and naval medical facilities to provide hospitalization and outpatient care for the dependent of active duty members -- at least on a space available basis.

It was estimated that before 1956 approximately 40% of such dependents did not have access to those facilities - principally for reasons of geography and existing workload.

Use of civilian hospitals by military dependents was authorized by the Dependents' Medical Care Act of 1956. This served to equalize access to hospital benefits for that significant portion who did not live on or near major military posts.

The 1956 Act stimulated the efforts of Federal civilian employees to gain equivalent coverage. The Congress enacted the Federal Employees Health Benefits Act in 1959. This included a new feature of extensive out-patient care which, for the military, was limited only to military hospitals.

The purpose of the Military Medical Benefits Act of 1966 was to provide out-patient care not only for dependents of active members but also for retirees and their dependents -- including Title III Reserve retirees drawing retirement.

The intent also was to provide to the military the same level of care available to Federal civilian employees through their high-option Blue Cross/Blue Shield coverage. The 1966 Act went further than the civilian coverage (or for that matter, exceeded exemplary industrial coverage) by providing financial assistance for active duty personnel whose dependents were physically or mentally handicapped. Part of the justification of this added benefit was to offset the inability of service personnel to meet State residence requirements to qualify for dependent admission to state institutions. (Since military members were exempt from State income taxes in the State in which assigned duty, if other than homestate, the thought was that qualifying for residence for admission to a State institution would make the family subject to tax in that state.)

Although military retirees, to include reserve retirees, had been eligible for all types of medical care on a space-available basis, their dependents had to go elsewhere for treatment of chronic diseases or nervous disorders. The 1966 Act authorized coverage identical to that for active duty dependents.²³

Another liberalization of coverage directly attributable to the emotionally-charged environment of the Vietnam era was this amendment to Title 10 by adding section (g) to paragraph 1079 of chapter 55:

(g) When a member dies while he is eligible for receipt of hostile fire pay under section 310 of Title 37, United States Code, or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) of this section (i.e. dependents who are physically handicapped or mentally retarded) shall continue to be eligible for such benefits until they pass their twenty-first birthday.²⁴

Mr. J. Fred Buzhardt, General Counsel to DoD in 1971, in a DoD letter to Mr. John Stennis, Chairman of the Senate Armed Services Committee, supported this proposed legislation to provide continued financial benefits to mentally retarded and physically disabled dependents of members who were killed or disabled by hostile fire.

...the unintended results of the present law places additional burdens on the dependents of men who have given their lives in the service of their country at a time when the dependents are least able to bear them....²⁵

One of the provisions of the Military Selective Service Act of 1971 required that the Secretary of Defense and the Secretary of Health, Education and Welfare

...conduct a joint study of...meeting medical needs of the Armed Forces through means which would require less dependence on medical personnel of the Armed Forces ...under contracts...medical profession. ...recommendations...submitted to the President...not later than six months after the date of enactment of this subsection.²⁶

This report has not been found.

A new Survivor Benefit Plan passed the Congress in September 1972.²⁷

The following year, the last Vietnam-oriented medical proposal became law. This one provided for medical care for dependents of veterans who had been totally and permanently disabled and for dependents of veterans who died as a result of service-connected disability.²⁸

While those last two actions have no particular effect on reservists they do conclude the chronology of enacted medical legislation through December 1977. The chronology will

The next section briefly describes some of the problems resulting from inter-service differences in medical coverage for reservists.

PART IV - INTERSERVICE DIFFERENCES IN MEDICAL COVERAGE FOR RESERVISTS

Despite legislative endeavors almost annually for the past fifteen years, significant variances still exist between the services on medical coverage for reservists. Historically, the Navy/Marine Corps have had one set of provisions and the Army another set. The Air Force has followed Army practice. The Coast Guard's provisions are modeled after those of the Navy although the Coast Guard's needs have historically been met by the Public Health Service during peacetime.

The example of continuation of pay and allowances while hospitalized is just one situation but serves to illustrate component differences. In the case where a reservist is hospitalized as the result of an injury incurred during inactive duty training (the typical weekend drill) all the services will provide for necessary hospitalization. The difference arises in that the Army and Air Force will continue pay and allowances during hospitalization for a period extending six months beyond the termination of existing orders while the Navy/Marine Corps continue pay only through the period of existing orders (i.e., that drill weekend). In both cases, during continued hospitalization, the reservists would be eligible only for subsistence. (And, officers are required to reimburse the cost of that subsistence.)

The legislative background for this difference goes back to 1924

(see page 7). No such comparable legislation was ever adopted for the Navy.

Other differences in medical entitlement exist, by component, depending on whether the Guardsman/Reservist is:

- o on active duty training for 30 days or less

or is

- o on inactive duty training

and whether he/she

- contracts a disease, or
- is injured

either

- while in training, or
- while traveling to or from

and is

- hospitalized
- temporarily disabled
- permanently disabled

and whether the disability relates to military duties or to the reservist's civilian occupation, and whether the component member:

- dies as a result of disease incurred or aggravated while going to or from;
- dies as a result of injury incurred.

By 1962, a lengthy act (the revision of Title 37 USC) had been developed, the Pay and Allowances of the Uniformed Services. Unfortunately, consistency was still elusive. In the following example, five of the seven Reserve Components of the "Uniformed Services" had a uniform policy. A member of the Army Reserve, Air Force Reserve, Navy Reserve, Marine Corps Reserve, and Coast Guard Reserve is entitled to the pay and allowances applicable to a member of the Regular force whenever:

- (1) he is called or ordered to active duty (other than for training. . .) for more than 30 days, and is disabled in line of duty from disease. . .; or
- (2) he is called or ordered to active duty, or to perform inactive-duty training, for any period of time, and is disabled in line of duty from injury. . . (emphasis added).

Separate paragraphs were required to reflect similar entitlements for the National Guard/Air Guard.

Title 37, Section 204(c) specifies that while a Guardsman is

entitled to basic pay from the date when he appears at the place of company rendezvous", no expenditure is authorized "before arriving at the place of rendezvous that is not authorized by law to be paid after arrival at that place."

That is interpreted to mean that there is no medical coverage for Guardsmen enroute to drills and before reporting for duty.

Air National Guard Regulation 160-01 sets forth, for Air Guardsmen who require medical treatment, their eligibility when they are on State duty as well as when they are in Federal status.

In the case of a Guardsman who is ill or injured, one of the vital determinations always is whether he is on State or Federal duty. The determination of Federal duty is universally regarded as providing the more advantageous medical and disability benefits than those available in State duty that translates to Workers' Compensation coverage that varies by state.

National Guard regulations specify that:

technicians who are injured in the scope of their Army National Guard civilian employment are not authorized medical care . . . but are entitled to medical care under the Federal Employees Compensation Act, Chapter 15 of Title 5, United States Code.

According to the DoD pay manual:

Entitlement to active duty pay and allowances and medical benefits commensurate with the

regular forces is not affected by resumption of normal civilian occupation, includes Government civilian occupation.

Nevertheless, many medical claims for reservists have to be adjudicated on a case-by-case basis each year instead of being processed by procedures derived from a consistent DoD policy covering all Reserve Components.

The Comptroller General, faced with so many different cases, has provided some constructive administrative guidance.

. . . the standard to be applied in determining the duration of the member's entitlement to pay and allowances is his inability to perform his military duties and not the duties of his civilian employment. . .

In simplest terms medical care for a reservist can be regarded as limited -- and properly so. After all, he is in fact a part-time employee, and as such could not be expected to receive all the benefits of his full-time counterparts.

It is true that when a reservist is serving on a full-time basis as defined in the legislation as being under orders for a period of more than 30 days, he receives the same coverage as a regular active duty member (and so do his dependents).

What is not clear, not widely known, not broadly understood, is the nature and extent of reserve member and dependent coverage in the more-typical weekend drill and summer training periods. Further confounding the understanding are some differences among the services, less extensive coverage for disease than for injury, the distinction between "during training" and traveling "to and from",

Differences between components might once have been functional and rational, but this chronology would point more to historical accident, legislative oversight, and administrative interpretation.

This helps to explain (but doesn't excuse the fact) that one cannot locate a simple, straight-forward exposition of reserve medical benefits.

What is clear is that the ruling hand of past practices and the parochial positions of the individual services still hold sway over the (relative) simplicity that could be achieved with a single DoD policy. There is consistency in treatment with respect to medical coverage for dependents of all services -- but not for reservists of all services. Thus, it seems almost unnecessary to observe that a single set of uniform and consistent provisions for reserves is long past due. But, it is not for lack of recognition that this lack of uniformity in the uniformed services lingers on. The file of proposals to rectify the

situation goes back many years. Congressional interest in removing inequities in medical coverage for reservists continues. In January 1977, Representative Montgomery introduced HR 96 "to authorize additional medical and dental care and other related benefits for reservists and members of the National Guard, under certain conditions, and for other purposes." Virtually identical bills had been introduced almost every year for 15 years past. HR 4020 and HR 9432, also in the 95th Congress (1st Session 1977), were similar attempts to reduce historical variances in medical voerage of reservists among the services.

In August 1973, the Congress passed the Veterans Health Care Expansion Act of 1973. Included in the act was the requirement calling for the National Academy of Science to "conduct an extensive review and appraisal of personnel and other resource requirements" of the Veterans Administration.⁶ The results of that comprehensive four-year study were published in June 1977 under the title, "Health Care for American Veterans." Although it is not possible or appropriate to discuss all the conclusions here, two that are disappointing (from the taxpayer's standpoint) will be mentioned.

The study stated:

Because the number of veterans who will require long-term care and geriatric services will double in the next 10 years, and almost triple in 20, this already large VA responsibility is almost certain to expand greatly in the next

10-20 years. It probably will not be affected significantly by federal health insurance legislation likely to be enacted in the next few years.
(Emphasis added) ¶

The study also indicated that Congressional intent as expressed in the National Health Planning and Resources Development Act of 1974, to foster cooperation among all hospitals, VA and non-VA, to minimize duplication and waste -- is simply not taking place.⁸

In view of the inevitable evolution to national health care, cooperation cannot start too soon. DoD, with its actions in the past 20 years, has been cooperating increasingly with civilian facilities so as to ensure that military and their eligible dependents are provided necessary medical services.

The VA Administrator's response, required by the initiating legislation, was published in September 1977 (and was even longer than the Study).⁹ It appeared to affirm the intent of the VA to "continue to march." This, despite the major criticism to the effect that more than 80% of all the medical care provided is for non-service-connected disabilities. In other words, the VA, in responding to its clients, is serving a population rather different from what it was originally established to serve -- and even under its new and dynamic administrator, is not planning to change.

At the present time, no service is keeping records of reservist usage of medical facilities during weekend drills. Neither the benefits to the reservist (of medical counsel or minor treatment most often on non-service connected ailments) nor the actual costs (or deferred benefit values) can be determined until existing data collection systems are refined.

Where data are available, that is, for active duty personnel and their dependents, there are some significant differences, by scope and extent of medical care provided. For example, apparently the Navy renders far less dental care to dependents than do other services, less than 10% compared with about 25% for the Army and Air Force. The Navy apparently considers it an active duty benefit and doesn't hesitate to invoke "the limitations of staff and space"; the Army appears to display the attitude of wanting to take care of its entire "family." The only purpose in mentioning these observable characteristics of medical support for active duty personnel is to suggest that such variations are likely to carry over into their support of the reserves.

As of December 1977, the entire DoD health care delivery system was reportedly serving 10 million beneficiaries at a cost in excess of \$3 billion annually.¹⁰ Roughly, the beneficiary count is as follows:

- 2.1 - active duty military personnel
- 2.3 - their dependents
- 5.6 - retirees (both active and reserve) and their eligible dependents

10.0

What would seem to be required is the same sort of high-level joint-service participation that provided the foundation for the Dependents' Medical Care Act more than 20 years ago. Such an effort, by professionals, is the only way to handle such a complex subject. Otherwise the well-intentioned but piecemeal "fixes" will continue to demand evaluation and response time without resolving the basic problem of achieving total consistency of medical coverage among the reserve components.

Certainly, the DoD Office of Health Affairs could be aided materially in such a task force approach by representatives from the Veterans Administration as well as the Public Health Service.

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MEDICAL BENEFITS FOR RESERVISTS AND THEIR DEPENDENTS

Legislative Authority. 10 USC, 3721 for USAR and ARNG; 10 USC, 6148 for USNR and USMCR; 10 USC, 8721 for USAFR and ANG; 14 USC, 755 for USCGR; 32 USC, 318 for the National Guard; and 38 USC, 874 for Veterans.

Purpose. To determine whether the existing medical benefits are appropriate elements of the compensation system for reservists and their dependents.

Background. Current entitlement of medical benefits for reservists are identified in Title 10 USC and in the 1962 Act entitled Pay and Allowances of the Uniformed Services.¹

The 1962 Act provided members of the Army Reserve, Air Force Reserve, Coast Guard Reserve, Marine Corps Reserve and Naval Reserve entitlement to the same pay and allowances as members of the regular force. Conditions for entitlement to medical benefits are 1) whenever a reservist is on extended active duty for more than 30 days and is disabled in line of duty as a result of a disease, or

¹ 76 Stat 458 (1962); PL 87-649.

2) whenever a reservist is performing training (inactive duty and/or active duty for training) for any period of time and is disabled in line of duty as a result of an injury.

The 1962 Act additionally provided members of the National Guard (ARNG and ANG) entitlement to the same pay and allowances as members of the regular force. Conditions for entitlement to medical benefits are 1) whenever a guardsman is performing duty in excess of 30 days and is disabled in line of duty as a result of a disease, or 2) whenever a guardsman is performing duty for any period of time and is disabled in line of duty as a result of an injury.

The distinction between these two categories of medical benefits is that reservists (other than guardsmen) are not covered during periods of training if they are hospitalized as a result of a disease -- they are only covered for injury.

The legislative history of medical benefits for the reserves is shorter than that for active duty personnel. It wasn't until 1836¹ that the reservist became entitled,

1 5 Stat 7 (1836); PL 24 - Chap 44.

by law, to be treated for wounds while in the service of the United States.

The National Defense Act of 1916¹ established the Officer Reserve Corps and the Enlisted Reserve Corps. Among the provisions given by the Act, an officer in the Reserve Corps was allowed a pension only for a disability incurred in the line of duty and while in active service. The enlisted reservist, on the other hand, had the same pension entitlement as the officer and was also allowed a pension if injured while traveling under orders to and from place of duty.

The extension of medical coverage was given to the National Guard and the Army Reserve in 1923.²

In 1939³ Army reservists (officers, warrant officers, and enlisted men) who were ordered into active military service for more than 30 days and who suffered disability or death in line of duty from disease or injury - were to receive the same pensions, compensation retirement pay and hospital benefits as the Regular Army. Some 18 months later the Navy passed similar legislation for Navy and Marine Corps reservists.

1 39 Stat 190 (1916); PL 64-85.

2 42 Stat 1508 (1923); PL 67-532.

3 53 Stat 557 (1939); PL 76-18.

By Executive Order in 1939,¹ the Veterans Administration was made responsible for the administration and payment of benefits, but determination of the extent of disability and if it was incurred in the line of duty were to be made by the Secretary of War.

Dependents of Army personnel had traditionally been taken care of by Army physicians, but it wasn't until 1884 that legislation² confirmed this practice. The dependents of Navy and Marine Corps active duty personnel were not entitled until 1943 (to include Coast Guard). Air Force dependent coverage was derived from the basic 1884 Army statute.

Dependent medical care varied among the services, (i.e., the Navy did not treat dependents who had contagious diseases - the Army did; the Navy did not provide hospitalization for nervous or mental disease - the Army did; and Coast Guard dependents received free treatment only at Public Health Service facilities). The recognition of the need to formalize this coverage and the need to make it consistent among the services brought DoD action in the early 1950's. After many years of

1 E.O. 8099, April 28, 1939; President Roosevelt.

2 23 Stat 112 (1884); FR 18 - Chap 217.

effort, a joint-service task force developed a uniform statutory basis for furnishing medical care to dependents. This became the Dependents' Medical Care Act¹ of 1956. Those eligible were dependents of regulars and reserves on active duty for more than 30 days (eligibility of dependents terminates when active duty ends); dependents of members (to include reservists) who died while on active duty; dependents of retired members and those who died while retired.

Discussion. Medical coverage for reservists has many variations in entitlement among Reserve Components concerning treatment, hospitalization, transportation, and continuation of pay and allowances.

Unlike dependent medical care, numerous inconsistencies concerning entitlement and coverage prevail for reserve members. For example, if a reservist is hospitalized as the result of an injury incurred during inactive duty training, all the components will provide for necessary hospitalization. The differences arises in that the Army and Air Force will continue pay and allowances during hospitalization for a period extending six months beyond the termination of existing orders while the Navy/

1 70 Stat 250 (1956); PL 84-569, Dependents' Medical Care Act.

Marine Corps continue pay only through period of existing orders (i.e., IDT). In both cases, during continued hospitalization the reservists would be eligible only for subsistence (officers are required to reimburse the cost of that subsistence).

However, some of the basic differences are whether the guardsman/reservist is on EAD for more than 30 days as opposed to training (IDT/ADT); whether hospitalization is a result of disease or injury; and whether the disease or injury is the result of training or occurred while traveling to or from the place of duty. For a guardsman, an additional consideration is whether he is on Federal duty or on State duty. In the latter case, he may be covered under Workmen's Compensation for the State.

Another problem has to do with disability coverage of a reservist on duty. The judgment on disability relates only to his ability to perform his functions in the reserve -- not to his capability to resume his primary occupation as a civilian.

Throughout recent years, Congress has shown an interest in reducing these variations and perceived inequities for reservists. Bills introduced in Congress such as HR 96, HR 4020, and HR 9432 (which were all introduced

in the 1st Session of the 95th Congress) were attempts to correct inequities. However, none of these has been enacted.

Medical coverage for the reserves has evolved to its present form through a fragmented approach. Fortunately, Regular Force members and their dependents do have a standardized medical program.

The fragmented state of the current medical coverage for reserves and the existing variations among components, the RCSS cannot conclude that medical coverage is an appropriate and functional element of existing compensation for reservists.

In summary, it is obvious that a single set of uniform and consistent provisions for reserve medical coverage is long past due.

Recommendation. The RCSS has determined that what is required is the type of high-level, joint service task force that provided the foundation for the Dependents' Medical Care Act more than 20 years ago. Such an effort by medical, legal, professional and administrative personnel (including representatives from the Veterans Administration and Public Health Service) would be the

best way to resolve such a complex issue. Otherwise the well-intended but piecemeal "fixes" will continue without resolving the basic problem; that of achieving total consistency of medical coverage among the Reserve Components.

POST EXCHANGES

Purpose. To show the history of the development and extension of post exchange privileges to reservists.

Legislative Authority. No statutory provision, only Military Department regulations.

Background. The history of the Post Exchange parallels that of the Commissaries. (See RCSS Background Paper of - 10 May 1977 on Commissaries.) In 1806 Congress recognized that soldiers needed facilities on-post where food, beverages, and merchandise could be purchased and where the men could relax and enjoy themselves. Congress then made provision for the operations of a vendor known as a sutler; and for certain welfare and recreation activities; placing them under the control of the commanding officer.¹ They also established rules and articles for the Armies of the United States stating that if the reserves (then known as militia) were receiving pay from the United States they would be subject to the same rules and

articles as the regular forces.² Because of the monopoly position that the sutler enjoyed (posts were in remote locations) he frequently sold inferior merchandise at high prices, encouraged the soldier to buy liquor, and further enriched himself by selling on credit and charging high interest.³

The armaments, clothing, and salary of all units inducted became the responsibility of the federal government in 1861. At this time when the militia was called to active service they were allowed:

the same pay, rations, and allowances for clothing as are or may be established by law for the army of the United States.⁴

With more troops coming into the forts at the onset of the Civil War, corrupt practices by the sutlers had increased to such a proportion causing Congress to pass an act abolishing the sutler system.⁵ This Act also designated the subsistence department of the Army to perform the functions previously performed by the sutlers. Because of inadequate supplies and insufficient funds, the department was not able to carry out its

functions. This led the way, once again, for the sutler, now known as the Post Trader, to sell for his own profit.

In the Act of 1870, William W. Belknap, Secretary of War, recommended a provision authorizing the Secretary of War

to permit one or more trading establishments at any military post not in the vicinity of any city or town, when in his judgment such establishment is needed for the accommodation of emigrants, freighters and other citizens ⁶

and persons were to be appointed to manage such trading establishments.

Impeachment charges were brought against Secretary of War Belknap for accepting bribes from post traders and he resigned from his office. This scandal forced Congress to take action and slowly the power of the Post Trader dwindled. Although not every military post had one, post traders continued to operate stores on military posts until 1893 when Post Tradership was abolished. ⁷

Colonel Henry A. Morrow the commander of the 21st Infantry Regiment, formally opened the first canteen, in 1880, at Vancouver Barracks. It was modeled after

the English system,⁸ which included a wet canteen and a dry canteen. The wet canteen was more of a social club with a library and reading room, a game and refreshment room where food and drink could be purchased at low prices. The soldier was charged a monthly fee for this canteen. The dry canteen was similar to the post trader's store but merchandise was sold at a small mark-up above cost and profits went for the benefit of the soldiers.

The canteen proved to be a success becoming self-supporting. More men began to spend their off-duty time there, and the number of disciplinary cases were reduced. (Colonel Morrow's decision to introduce canteens came about after he had observed many of his soldiers visiting unsavory places in town, neglecting their duties and losing their military bearing.) This led to other canteens being opened at other posts.

The Assistant Adjutant General, Major Theodore Schwan, was instructed by the Secretary of War to prepare a report on canteens and post traders. His

report of 31 December 1888 is regarded as the turning point in the development of the exchange system.⁹

Major Schwan's recommendations were later approved by the Secretary of War and published in the General Orders.¹⁰ The purpose of the canteen was to supply the troops, at moderate prices, with such articles as might be necessary for their use, entertainment and comfort. The canteen also allowed room for gymnastic exercises, billiards, and other proper games.¹¹

On October 1, 1891, the Adjutant General recommended that the Government provide buildings to accommodate the canteen and its activities.¹² Consequently, ever since 1902 Congress has made regular provision in appropriation acts¹³ for the construction, equipment and maintenance of buildings for the use of the post exchange.

In 1892, the Secretary of War changed the name of the Post Canteen to Post Exchange.¹⁴

One of the most comprehensive military measures was passed in 1916 with the National Defense Act. It made provisions for the Officers' Reserve Corps, the En-

listed Reserve Corps, and the National Guard Reserve,
stating that when they were called to active duty:

for purposes of instruction and training,
and during the period of such active service, instruction, or training, (they would receive) all the authority, rights, and privileges of like grades of the Regular Army. ¹⁵

Despite the expansion of the armed forces in World War I, the operational framework of the post exchange remained unchanged. It was judged not fully capable of handling the increased demand.

Nevertheless; it wasn't until 1941 that the Advisory Committee on Army Exchanges , under the chairmanship of Karl D. Gardner, confirmed these inadequacies in a formal report to the Chief of Staff. Here it was the beginning of World War II and the post exchange system could not meet the needs of a growing military force. The report stated:

Because efficient operation of exchanges is such an important factor in building morale, the organizing and operating of exchanges require the management of a central organization in the War Department to initiate policies, provide methods for procuring funds, and provide uniform methods of operation, personnel, audit and control. The head of the central organization must have the authority to carry out policies and enforce rules and regulations. ¹⁶

Acting upon the recommendations of the Advisory Committee, the Army Exchange Service was established as a separate agency in the Morale Branch of the War Department on June 6, 1941. The independent exchanges were discontinued. The value to the organizations and units of each share in each post exchange serving these organizations and units was determined at the close of the business month, July 1941.the Army Exchange Service received a fee of $\frac{1}{2}$ of 1% of the gross sales by domestic exchanges. The proceeds of these collections were paid into the Army Exchange Fund. ¹⁷

This exchange system was tested for effectiveness during the combat years of World War II proving itself equal to the task.

The National Security Act of 1947 established the Department of Defense and the separate Departments of the Army, Navy, and Air Force.¹⁸ On May 14, 1949 the Secretary of Defense authorized the joint operation of the Army and the Air Force exchanges and other related activities.¹⁹

Navy Ships' Stores became official governmental activities in 1909.²⁰ Navy shore-based exchanges

which were independent entities, came under the control of the Navy Department in 1923 and both systems were consolidated under the Navy Ships' Stores Office in 1946 and 1947. The Navy has a land-based exchange and the Military Sea Transport Service (MSTS) exchange which are funded from non-appropriated monies, while commissaries and Ship's Stores Afloat operate from stock-funded appropriated monies.²¹

The first Marine Corps post exchange was established in 1900.

Because the Services were separate, each had its own regulations pertaining to identification required to enter the exchange. The Army and Air Force specified:

The patron is required to show his military identification card. If card has been punched, indicating inactive status, he is required to show evidence of Reserves status such as official orders to active duty. The patron is also required to sign the sales slip and state thereon his military serial number and address. ²²

Navy:

All patrons purchasing merchandise at the store are required to show identification card (military) and give their file or service number. In the case of Volunteer Reserve personnel a copy of orders must be shown if they are not on active duty. ²³

Marine Corps:

Due to the fact that active duty officers are carried on station lists, rosters, etc., and identified by their own cognizance, as well as identification cards, these officers are authorized to purchase items from the Uniform Shop. All other categories of officers (i.e. Organized Reserve, Inactive Reserve, Fleet Marine Force Reserve, and retired list officers) are cleared by Hdqtrs Marine Corps prior to acceptance of special order (clothing) requests. All "in person" purchases at the Uniform Shop are identified by their identification card, as well as personal cognizance. ²⁴

In 1949, a subcommittee of the House Armed Services Committee (H.A.S.C.) held hearings on DoD resale activities.²⁵ Under its authority to conduct inquiries and investigations relative to its legislative function the sub-committee, along with the Military Departments, developed a regulation which later became the DoD Directive, Armed Services Exchange Regulations.²⁶ During these hearings the Army and the Air Force called attention to the fact that non-regular officers of the Army and Air Force permanently disabled in service and who were receiving retirement pay from the Veterans Administration, subject to the UCMJ, and subject to being called to active duty, were not receiving commissary and exchange privileges. Also, Army and Air Force widows were denied these same privileges. The Navy however, authorized commissary and exchange privileges for both of these groups.

The sub-committee was against broadening eligibility that would overcrowd post exchanges. This was a concern not shared by the Services. Later the sub-committee concluded that geographical distribution would prevent an overflow of people.²⁷ The subcommittee and Services

agreed to extend eligibility to non-regular personnel retired under Title III (1948), and non-regular personnel retired for disability.²⁸ It also established authorization for limited and unlimited privileges. Among those who were authorized unlimited privileges at the exchange were:²⁹

- members of the Selective Reserve (and their dependents³⁰) on the basis of one day of exchange use privilege for each day of inactive duty training performed³¹;
- active and retired military personnel and their dependents;
- widows of and their dependents;
- officers and enlisted men of the Armed Services of foreign nations when on duty with U.S. Armed Forces under competent orders issued by the individual Military Departments;
- veterans with 100% service-connected disabilities and their dependents;
- government departments or agencies outside the DoD when the local commanding officer agrees that supplies or services can't be procured elsewhere and service to exchange customers will not be impaired.

Others authorized limited privileges at the exchanges:

- exchange employees
- civilian employees of the DoD during temporary duty and occupying government quarters on military installations;
- active duty officers and enlisted men of the Armed Forces of foreign countries when in a U.S. military installation are entitled to exchange privileges with restriction as to the quantities of merchandise bought.

The DoD policy requires military exchanges in CONUS to be self-sustaining with respect to the payment of salaries of,

civilian employees, to purchase of operating equipment and supplies, the maintenance of all equipment used, and the payment of heat, water, light, power and other utilities furnished by the government. Non-reimbursable support is furnished from appropriated funds in such areas of military pay, military pay, military medical inspection of exchange food outlets and of the ingredients used in those outlets and medical examination of food handlers, barbers and beauty shop operators. These inspections and examinations are designed to protect the exchange customers. Exchanges are provided security and fire protection without reimbursement. They are also permitted the free use of government-owned buildings in which to conduct their activities. ³²

The Army-Air Force Exchange Service (AAFES) organization consists of a major headquarters in Dallas, Texas, with direct command lines to Area Support Centers (ASC's) throughout CONUS. The ASC's conduct procurement, administrative, and logistics support functions for the various exchanges throughout CONUS. The individual exchanges operate under the command of the post or base commanders on whose stations they are located.

AAFES overseas operations are conducted under the command of a Headquarters, European Exchange System (EES).

a Headquarters, Pacific Exchange System (PACEX), and an Alaskan Exchange System. The overseas operations are essentially subordinate commands of the European, Pacific, and Alaskan military commands, although they receive exchange policy and technical direction from the Dallas Headquarters. Offshore overseas exchange from Thule, Greenland to Rio de Janeiro, Brazil are under the technical supervision of an Offshore Support Office in Dallas, Texas.³³

The Navy Ship's Store Office in Brooklyn acts as a central headquarters issuing policy and technical direction. The individual exchanges, are under the command of their respective base commanders. The Navy Exchange Service Center report to the central NSSO in Brooklyn, maintaining area coordination with the Naval District Commandant's Offices. The NESC does not have direct command of the exchanges which it services.³⁴

The Marine Corps Exchange Service has decentralized operations, receiving policy and technical direction from a small staff in Washington, D.C.³⁵ Each individual exchange is autonomous both in its procurement and its operation, complying with the provisions of the centrally issued Marine Corps Exchange Manual.

Until recently, Congress had not enacted legislation authorizing military exchanges and defining their functions. The absence of such legislation had left the question as to whether the exchanges were governmental or private in character. Recent legislative, judicial, and executive actions have left no room for doubt today that they are part of the U.S. government. In 1942, the U.S. Supreme Court found that the Army-Air Force exchanges,"

...are arms of the Government, an integral part of the War Department, and partake of whatever immunities it may have under the Constitution and Federal statutes. ³⁶

In 1952,

Congress by implication recognized exchange employees as Federal employees by exempting them from laws administered by the Civil Service Commission (5 USC 150K exempts civilian employees of the exchanges Civil Service Commission and the Federal Employees Compensation Act. 5 USC 150K-1 places exchange civilians under the Longshoreman's and Harbor Workers' Compensation Act.) ³⁷

In 1957, the Army and Air Force Departments stated,

The AAFES is an instrumentality of the United States entitled to the immunities and privileges available under the Federal Constitution and statutes to the departments and agencies of the Federal Government... 38

During 1970 the total force concept was introduced and its application was,

geared to recognition that in many instances the lower peacetime sustaining costs of reserve forces units, compared to similar active units, can result in a larger total force for a given budget or the same size force for a lesser budget. In addition, attention will be given to the fact that Guard and Reserve Forces can perform peacetime missions as a by-product or adjunct of training with significant manpower and monetary savings. 39

then, in 1973,

Total force is no longer a "concept." It is now the Total Force Policy which integrates the Active, Guard and Reserve forces into a homogenous whole. 40

The Total Force concept requires "full time" availability and frequent participation which means that he should be entitled to many of the same privileges of his active duty partner. 41

On May 8, 1973, the House Armed Services Committee approved the DoD request that members of the Selective Reserve be authorized unlimited exchange privileges on the day of their scheduled drill periods. This extended privilege was requested to enhance the prestige of the Selective Reserve and to improve individual participation.....⁴²

Because commanders were required to schedule a full four hours of training for each training period, it was realized then, that although Selective Reserve had the right to use the exchange with unlimited privileges they could not exercise this privilege since post exchanges were opened during that training period. A commander was forced to consider either giving the reservist a break period to provide accession or extend the training day. Also, whether or not to deny the reservist privileges authorized to them by the Department of Defense.

To correct this situation and thus assure the full advantage of these privileges, the Department of Defense proposes, subject to your concurrence (H.A.S.C.), to remove the limitation on the days in which the Reservist is authorized to exercise this privilege. Additionally, we propose to provide similar privileges for those members of the Ready Reserve who are officially authorized to participate in regularly scheduled inactive duty training periods, for which pay is not authorized.⁴³

Hon. G.V. (Sonny) Montgomery (D Miss) stated:

The extension of full Post Exchange privileges for the Reserve Component is the only incentive recommended by the Department of Defense in two years.....
.....at the present time officers and high ranking NCO's are benefitting from post exchange privileges but most of the enlisted men are unable to make it to the post exchange since they are in the field the entire time they are on active duty for training and the distance is usually too great for them to take advantage of the post exchange. 44

At this hearing Menswear Retailers of America shared their feelings of opposition along with other Retail Associations. Despite this opposition post exchange privileges were extended,

Unlimited exchange privileges are authorized for members of the Ready Reserve who participate in regularly scheduled inactive duty training on the basis of one day of exchange use privilege for each day of inactive duty training performed. For equity, a day of inactive duty training is defined as two inactive duty training periods. 45

And, in July 1976, the Leave and Earnings statement became the form of identification for the Guardsman. 46

In other Reserve components, dependents are identified by Reserve orders or a letter of authorization that includes authentication by the unit commander. The authorization typically contains the name, rank, and Social Security number of the sponsor, beginning and ending dates of the sponsor's tour the names of individual dependents and their relationship to the sponsor, and designation of exchange privileges.

When a spouse accompanies his or her Reserve sponsor to the exchange when using a shopping day granted for attending drills, identification is requested to prove that they are indeed married. Since no military dependent ID has been issued them, a driver's license or some similar identification with a photograph is requested. If the identification does not suit the admittance clerk, the spouse is barred.
All register transactions must be completed by him. And our 12 year old is not admitted at all. ⁴⁷

In 1977 the H.A.S.C. approved the DoD proposal to correct this inequity, authorizing,

dependents' of a member of the Ready Reserve to be permitted to accompany him at the time he exercises his exchange privilege. ⁴⁸

The exchange benefit is truly a benefit if the reservist lives within reasonable proximity of an exchange. Retirement is another benefit which if the reservist reaches age 60 he may collect. Rep. Sonny Montgomery (D-Miss) introduced HR 97 in the 94th Congress which would have amended section 1448 of Title 10, United States Code; it provided survivor benefits in case of death of certain members of the armed forces who would have died before becoming entitled to retired pay for non-Regular service. It was voted down and reintroduced in the 95th Congress.⁴⁹

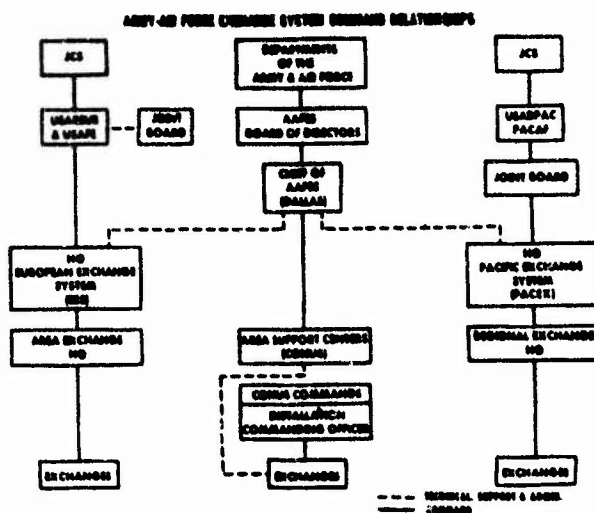
No new issues have been introduced into Congress that concern reserves and the post exchange privilege.

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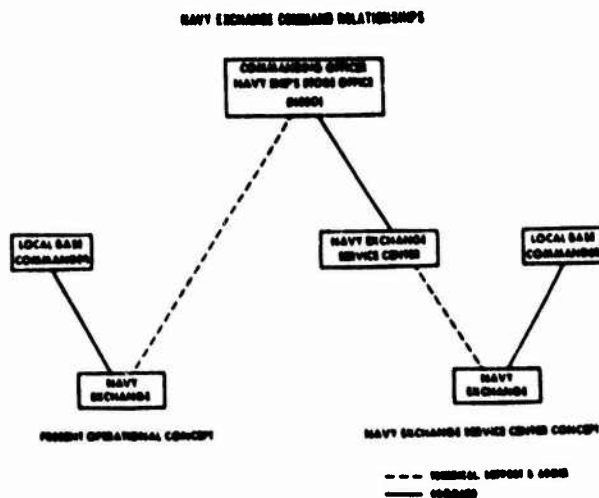
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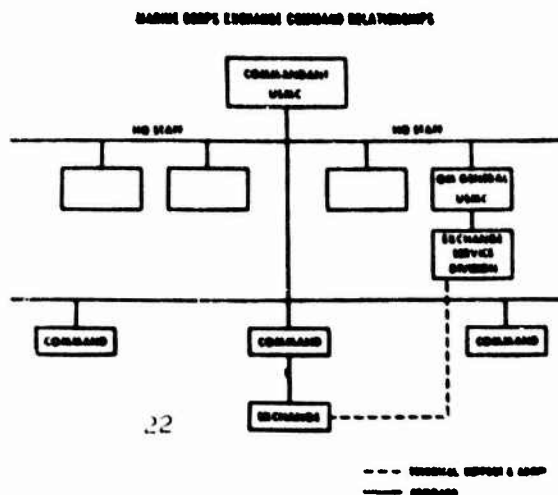
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January 1978

MILITARY EXCHANGE/COMMISSARY

Legislative Authority. Military Exchange: No statutory authority, regulated only by Military Department regulations. Commissary: 10 USC, Section 4621 (Army), 10 USC, Section 7601-7605 (Navy), 10 USC, Section 9621 (Air Force).

Purpose. To determine whether existing Military Exchange and Commissary privileges are appropriate elements of current compensation for the reserves.

Background. These two items are discussed together because the evolution of the military exchange system parallels that of the commissaries. The National Defense Act of 1916 made the first provisions for reservists to use the exchange and commissary facilities. However, this benefit could only be used when reservists were called to active duty. The eligibility criteria for reservists varied by component. Each service required different means of identification to gain access, differed as to what category of reservist could gain access, and varied as to when access could be exercised.

The exchange/commissary privileges for reservists basically remained unchanged until 1949, when members of the Selected Reserve were granted exchange and commissary privileges when on active duty for at least 72 hours. For example, the exchange system authorized reservists unlimited privileges when performing active duty for a period of 15 days or more and limited privileges when on active duty for at least 72 hours. Limited privileges denoted that reservists could purchase only articles of uniform clothing, accoutrements and equipment, in such quantities as would be required when called to active duty. This policy remained in effect until 1973 when reservists were granted unlimited exchange privileges (with respect to items that may be purchased) and utilization on scheduled drill days. However, this expansion of privileges created additional problems for the reservists. Specifically, although reservists could use the exchange, their opportunity to avail themselves of this benefit (i.e., only on drill days) conflicted with their training at drills. In 1974 this situation was rectified by allowing reservists to use the exchange during days other than when they were drilling, but on the basis of one day of use for each day of inactive duty training performed. (A day of inactive duty training is defined as two -- four-hour -- inactive

duty training periods.) Dependents became authorized to accompany their sponsor into the exchange in May of 1977 (before that time they had to wait outside).

Although the 1949 restrictions for reservist access to military exchanges have been eliminated, the basic requirement of 72 hours' active duty remains in effect for reservists to gain access to commissaries.

A reservist who meets the requirements for usage of the military exchange can accumulate up to 24 days of exchange privileges by performing 48 UTAs. These privileges can be accumulated and used anytime during the course of a calendar year. This differs from utilization of the commissary whereby a reservist/dependent can only have access to the commissary during the period in which he can present orders for active duty and/or active duty for training in excess of 72 hours.

The regulation governing admission of dependents to the military exchanges differs from that required for commissaries. For reservists' dependents to gain admittance to the military exchange they must be accompanied by their military sponsor, whereas dependents do not have to be accompanied to utilize commissary facilities.

Closely associated with these admission criteria are the means by which reservists and dependents are identified as authorized to use these facilities. Each of the service components uses a different means of reservist authorization. When a reserve member uses another service's facility there have been awkward situations because facility employees were not familiar with the authorization documentation of other services. Although these situations are now less frequent, there is still sometimes embarrassing confusion with the variety of authorizations.

Discussion. The benefits associated with utilization of both exchange and commissary facilities are generally regarded as part of the total military compensation package for recruiting and retention of both the reserve and active personnel.

Throughout recent years, the benefits associated with both the exchange and commissary have been subjected to much criticism. Local merchants complain about unfair competition and loss of revenues. The families of, and the reservists themselves, complain that the real value of exchange and commissary benefits is greater for married reservists and is very directly related to one's proximity to the facilities.

Since 1949, the military exchange privilege has been expanded to alleviate most of the inequities perceived by reservists.

The only exception to this is that eligible reservists must accompany his/her dependents into the exchange. Many reservists have called attention to this unnecessary inconvenience.

A recent survey conducted for the Department of Defense to determine the motivational factors involved in the accessions and retention of reserve personnel revealed that exchange and commissary privileges have a relatively small impact¹ in the motivation of personnel to be recruited or retained in the reserve community. This is supported by other recently conducted surveys.² The surveys indicate that within the present reserve community, the benefits associated with the exchange and

¹ A Study of Current Attitudes of Young Men and Reserve Recruiters Concerning Enlistment in the U.S. Army Reserve, Market Facts, Inc., November 1977.

² (1) First Term Guardsmen Retention Study, National Guard Bureau, Departments of the Army and the Air Force, November 1976.
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commissary are not correctly understood.¹ Some reservists perceive the entitlement to be greater than it is, and not surprisingly others perceive their PX and commissary privileges as being less than they really are. This is substantiated both by numerous visits to field activities and a large volume of correspondence received from members and various reserve associations.

Of course, it is important to understand that there are no guarantees that these privileges will remain unchanged for the active duty and reserve personnel as they currently exist.

Recommendations. Based upon the foregoing the Reserve Compensation System Study recommends:

- that the dependents of eligible reserve members be authorized admittance into military exchange facilities without the member being present.
- no change be made to existing commissary privileges for reservists.
- that a standard means of identification be established for reservists of all components

¹ A Summary of State and Unit Attitudinal Studies prepared for National Guard Bureau, Department of Army and Air Force by Market Facts, Inc., and National Analysts, April 1976.

and their dependents to gain access to the military exchange.

- that eligibility for use of the exchange and commissary facilities be summarized clearly and communicated broadly in the reserve community.

COMMISSARIES

As a Benefit for Military Reservists

Purpose. To operate commissary stores that provide items at a convenient location and at a reasonable price to military personnel.

Legislative Authority. 10 USC 4621 (Army), 10 USC 7-01-7605 (Navy), 10 USC 9621 (Air Force).

Background. In the early 1800's, commissary resale stores were established at Army frontier posts to provide food and other items to servicemen at cost. Provision was then made by Congress through the Act of 1806¹, allowing each post or regiment to appoint a vendor known as a sutler. That Act gave permission for the sutler to sell good and wholesome provisions; prohibited the sale of liquor after nine at night; and specified that commanding officers could not charge outrageous prices for houses or stalls rented to sutlers. It also established rules and articles for the government of the Armies of the United States mentioning the reserves or militia as it was then known:

officers and soldiers, of any troops, whether militia or other, being mustered and in pay of the United States, shall, at all times and in all places, when joined, or acting in conjunction with the regular forces of the United States, be governed by these rules and articles of war.....²

Another Act in 1821³, reaffirmed the sutler's position. Because of the large profits made from liquor sales, the sutler encourage the soldiers to buy liquor and this led to much drunkenness among the troops. In addition, because of the monopoly position the sutler enjoyed (most military posts were in remote locations) he often sold inferior merchandise at high prices, and further enriched himself by selling on credit and charging high interest.

In 1861⁴, the armaments, clothing, and salary of all units inducted became the responsibility of the federal government, also the situation of the reserves was defined:

... the militia so called into the service of the United States shall, during their time of service, be entitled to the same pay, rations, and allowances for clothing as are or may be established by law for the army of the United States.

With the Civil War ensuing and additional troops coming to the forts, abuses by the sutlers became even more widespread and weren't brought to an end until the Appropriations Act of 1866⁵. Congress abolished the sutler system and authorized a Subsistence Department of the Army to perform the functions previously performed by the sutlers, and to sell - at cost - food and related merchandise to officers and enlisted men.

The Marine Corps opened its first commissary store in 1909, the Navy in 1910, and the Air Force in 1947.⁶

The National Defense Act of 1916⁷, was one of the most comprehensive military measures to that date, making provisions for the Officers' Reserve Corps, the Enlisted Reserve Corps, and the National Guard Reserve, saying that if and when these people were:

.....called into active service or for purposes of instruction and training, and during the period of such active service, instruction, or training, (receive) all the authority, rights, and privileges of like grades of the Regular Army.

Between World War I and II there was no new legislation that affected the commissary privilege for reserves. During

this period, the Army and the Navy Departments had their own regulations concerning the commissary privileges for the reserves. The Army's regulation of 1928 read:

Members of the Officers' Reserve Corps and the Enlisted Reserve Corps while on active duty. (were allowed access to the commissaries)⁸

Then in 1946 the Army regulation was changed to say:

Members of the Army of the United States, including the National Guard, Officers Reserve Corp . Enlisted Reserve Corps, and Regular Army Reserve, while on active duty for a period in excess of 7 consecutive days (were allowed access to the commissaries).

The Navy's regulation didn't establish any minimum active duty requirement for reservists but did include retirees:

Members of the Naval Reserve and Marine Corps Reserve on active duty or in retired pay status.....(were allowed access to the commissaries). ¹⁰

The Act of 1947¹¹, established the Department of Defense and the separate Departments of the Army, Navy, and Air Force. This Act still allowed each service to have its own regulations. But, the House Armed Services Committee (H.A.S.C.) was required to approve basic organi-

zational and operating regulations for military commissaries and exchanges before they could be implemented. This control was not established by a specific law, but as legislative oversight exercised by the Committee under its authority to conduct inquiries and investigations relative to its legislative function.

It was brought out by the Army and the Air Force in 1949, during a H.A.S.C. hearing on Department of Defense resale activities, that there was an inequity existing in certain categories between themselves and the Navy. This difference arising from the fact that non-regular officers of the Army and Air Force permanently disabled in service and who were receiving retirement pay from the Veterans Administration, subject to the UCMJ, and subject to being called to active duty, were not receiving commissary privileges. Also, Army and Air Force widows were denied commissary privileges. The Navy, authorized commissary privileges for both of these groups. The special subcommittee expressed their opinion:

that exchange and commissary privileges were originally established for the convenience and benefit of military personnel on extended active duty and it was our original decision to limit the privileges to that category. The Services have strenuously opposed us in the opinion..... 13

If there had been too much opposition by the Services to any administrative regulation passed by the subcommittee -- a law, instead, which takes much longer to pass, would have had to be hammered out and enacted. This was not the case. From these hearings, a joint service commissary store regulation was developed in 1949, authorizing non-regular personnel retired for disability and non-regular personnel retired under Title III, 1948.¹⁴ It also established a consistent active duty requirement of 72 hours for all Reserve Components.¹⁵ Among others who are authorized to use the commissary are:¹⁶

- active and retired military personnel;
- surviving spouse¹⁷
- veterans with 100% service-connected disabilities;
- active duty and retired commissioned officers of the Public Health Service;
- certain civilian officers and employees of the Armed Services within the United States when specifically authorized by the Secretary of the Department concerned and when it is impracticable for them to procure such commissary store supplies from civilian agencies without impairing the efficient operations of the installation;
- civilian officers and employees of the United States Government outside of the U.S., and such other persons overseas as may be specifically authorized by the Secretary of the Military Department concerned;

- ship's officers and members of the crews of vessels of the Coast and Geodetic Survey¹⁸;
- ship's officers and members of the crews of vessels of the National Oceanic and Atmospheric Administration;
- recipients of the Medal of Honor.

Unfortunately, there aren't any data identifying the extent of commissary store usage by each of these groups.

Since 1952, annual Defense appropriations have forbidden the use of appropriated funds to pay:

- shipping costs of commissary items by commercial transportation within the United States;
- utility costs in commissary buildings in the United States (except Alaska);
- operating equipment and supplies;
- store losses through shrinkage, spoilage and pilferage of merchandise.

In December 1974, a new law¹⁹ removed the costs of construction and renovation of commissary stores in the United States from the cost items that could be paid from appropriated funds.

Commissary stores are exempt from sales taxes imposed by state and local governments²⁰. There is also a law authorizing private persons to operate commissary stores²¹; and a 1974 law permitting adjustments or surcharges related to costs²².

There has been much debate in the House Armed Services Committee in the mid 1970's because of the substantial sums of appropriated monies that go into the operation of commissary stores. Because of this, a proposal by the President in 1975 called for the remaining direct costs of commissary store operation (personnel, and overseas utilities) except for the cost of transporting merchandise to overseas stores to be reimbursed (through higher prices or increased surcharges) to make the system completely self-sustaining. This would probably have reduced the savings available for commissary patrons (generally 20-30%) by about five or six percent²³. After hearings²⁴ and bills of opposition²⁵, Congress voted down the President's proposal in 1975.

Because of the impact the proposed changes would have had, the Secretary of Defense authorized a study to improve efficiency, organization, and operating structure of the commissary system. The study, by the Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs), headed by Brigadier General Emmett W. Bowers, USA, reported the following alternatives in May 1975²⁶:

- "Creation of a Service-wide commissary management organization to operate Service commissary stores
- Establishment of common management organizations for military exchanges and commissary stores for the respective Military Service
- Creation of one agency to operate all commissary stores within DoD
- Government-owned, contractor-operated system for commissaries."

These alternatives are still being analyzed by the Department of Defense as possible solutions to the growing costs of subsidizing commissaries.

As of January 1, 1978²⁷ there were about 400 commissary stores of which approximately \$2.9 billion of merchandise in their fiscal year ending in 1977, of which \$438 million was overseas.

There are approximately 23,846 civilian employees assigned to the commissary stores. (Congress has asked that the amount of employees be cut. The increase of employees from last year (23,000) is due to the conversion of full-time employees to part-time to include trainees.) 1,961 military personnel are also assigned to the commissary stores.

The Navy has quite centralized command and control of commissaries under the Naval Supply Systems Command and through the Commanding Officer, Navy Resale System. The Army, Air Force, and Marine Corps commissary systems are decentralized, with supervision and policy guidance exercised by the respective service headquarters, and command and control functions performed by the local station, base, or post commander. Also, the Army and Air Force have both troop issue and commissary store functions combined at the local command level. The troop issue function is an integral part of a military operation and must be maintained as required for the support of troops regardless of cost.

DoD Directive 1330.17 states that commissaries are to be operated on a self-sustaining basis, except when otherwise provided by statute.²⁸ The military departments are authorized to use stock funds, industrial funds, operation and maintenance funds, or other appropriated funds to finance commissary store supply and operating costs. For commissaries operated overseas, cost of utilities and shipping costs from the United States

are considered permissible expenditures for appropriated funds. The expense and cost of goods sold are offset against sales receipts and surcharges collected.

The savings eligible persons can enjoy through purchasing food and other items in the commissaries can be considerable. The benefit is properly regarded as part of the military compensation package for recruitment and retention. Of course, single persons, living in the barracks and eating in the mess hall have little occasion to use the commissary - and don't consider it a benefit. Generally speaking, the larger the family and the more ready the access -- the larger the value of this benefit.

Of late, the reserve benefit package has come under fire, with the families of the reserves and the reserves themselves challenging what they call,

empty benefits, they are there but
it's difficult to collect them.....
.....
Benefits for reservists and their dependents are slim. Exchange and commissary privileges are extremely limited and difficult to collect.....
A reservist or guardsman is not eligible to collect any retirement benefits until he or she becomes 60, no matter how many years have been served. Yet these benefits are touted by the military as they try to recruit men and women for duty in the Reserve components. 29

According to an Air Command and Staff College Study
in 1976: ³⁰

the commissary system is currently undergoing changes which are expected to continue through the near future. These changes are an effort to place the system on a self-sufficient basis. The loss of appropriated funds to the commissary system will necessitate a surcharge increase from 4 percent to possibly 13 percent..... It has been postulated in this paper that a significant portion of the lost commissary patrons could be replaced by the Selected Reserve. This action would help to reduce the economic impact of lost sales to the commissary system. It would also help to minimize the price increase of goods to the remaining patrons, thus preventing further customer loss and a subsequent violent upward price spiral.

In 1974, Major General Verne L. Bowers, Adjutant General, Department of the Army explaining to Rep. Les Aspin (D.WI) his reasons for not extending the entitlement of unlimited commissary privileges to the reserves: ³¹

Mr. Aspin....., what is the philosophy behind who is entitled to commissary privileges?

General Bowers. Well, the entitlement to the commissary privileges is at the moment related to the full-time active duty member and the retired individual and their families, basically.

Mr. Aspin. Is there any logical reason to exclude reservists from that?

General Bowers. The best reason that I can give you right at the moment is that these facilities are extremely crowded, as most of us are aware. We do have to be careful that we do not saturate them to the point that they are unserviceable to the people for whom they were primarily built.

The Air Command and Staff College Study makes these recommendations:³²

Action must be taken to at least minimize the impending dangers to the system. The following recommendations are offered to help to ameliorate the forecast conditions:

- a. Allow the Selected Reserve forces unlimited use of the commissary;
- b. Inform the public, if there is any backlash to recommendation a, that, under the Total Force concept the Selected Reserve is a "full-time" available fighting force;
- c. Educate the commissary patrons about the actual savings that the commissary affords them over commercial food stores;
- d. Provide operating hours which best accommodate the customer's shopping pattern in an effort to prevent customer dissatisfaction and subsequent loss;
- e. Solicit and investigate suggestions from commissary patrons on operational improvements of the commissary.

There were no new issues relating to commissaries presented to Congress in 1976, nor any pending for the 1977 legislative year.

In the Defense Department Annual Report released in January 1977,³³ DoD proposed to continue the appropriated fund support to the commissary stores, (\$31.6 million).³⁴ Cost reductions were anticipated to result from centralizing the management of Army and Air Force commissary stores. Other management improvements were planned to reduce the cost of support while maintaining a reasonable savings for the commissary patrons.

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RCSS
Legislative History
16 August 1977

SERVICEMEN'S GROUP LIFE INSURANCE (SGLI)

Legislative Authority: Veterans Insurance Act of 1974,
88 Stat 165 (1974), PL 93-289.

Purpose: To describe the legislative history of extending
SGLI coverage to reservists and retired reservists and to
provide a background of how the program is essential.

Background: The Veterans' Insurance of 1974¹ extended Service-
men's Group Life Insurance (SGLI) to full-time coverage for
ready reservists and for retired reservists from the date of
retirement to the beginning of their pension at age 60 (61
if a delay in pension). The Veterans' Insurance Act became
law on May 24, 1974. Action in Congress had begun long before
the introduction of HR 6574 on April 4, 1973.² Starting with
HR 13168 introduced on February 16, 1972,³ a variety of bills,
hearings and reports were produced during the 92d and 93d
Congresses. A synopsis of the legislative history of all these
bills accompanies this report. (A copy of the enacted statute,
all hearings and reports, and most of the related bills has
been collected by RCSS for future reference.)

The legislative history includes repeated statements of the
two purposes for the SGLI extensions:

- To create an additional recruiting and retention incentive for the reserves;
- To provide coverage for retired reservists not eligible to receive pensions (under 60 or 61).

A significant fact is that the cost to the government was foreseen to be nothing.

Among the authors of the nine similar bills submitted to the 92d and 93d Congress, Representative Montgomery stands out as the leading Congressional proponent of SGLI. Congressional support for the measures was broad to say the least. None of the changes in the bills restricted coverage to any group, and the votes on the final bill resulted in only one negative vote.⁴ (Representative Hechler of West Virginia registered a protest vote because of the claim that the action would not cost the government anything.⁵) The most striking element in analyzing the legislative histories of these nine bills over two Congresses is not the intricacies of the bills and the details of Congressional action, but is the sheer volume of Congressional action: nine bills, four hearings, and four reports over a period of over two years, on an issue that was never disputed! While Representative Montgomery was the strongest supporter in Congress, the actual source of the text of the first bill on

February 10, 1972 is somewhat uncertain.

The Legislative Reference Service has no record of any DoD proposal concerning SGLI before the submission of the first bill. The correspondence generated from the bill did make reference to studies in which DoD had been involved. Secretary of Defense Laird, in a letter of April 25, 1972 to Senator John Stennis, stated:

In the course of the past eighteen months, we have considered numerous recommendations from a variety of sources in our search for means by which we could maintain Guard and Reserve personnel strengths at a level commensurate with the Total Force responsibilities to which they are committed. Included among these sources have been members of the Congress, Guard and Reserve organizations and concerned citizens.

Among the list of the incentives in the letter is the following:

"The extension of full-time Servicemen's Group Life Insurance to certain members of the Ready Reserve and Retired Reserve." This is a no cost incentive for participation in Guard and Reserve programs. It will also provide the means for protecting the equity which the retired Guardsman or Reservist (who has completed all the requirements for retirement except attaining age sixty) has accumulated toward retirement. HR 13168 would accomplish this purpose and a favorable Department of Defense report has been forwarded to the House Committee on Veterans Affairs.

Two studies in which DoD participated may have been the origin of the extension of SGLI. A memorandum from the Office of Legislative Affairs of the Navy to the Chief of Legislative Liaison of the Army referred to a comprehensive study of reserve incentives made by the Guard and Reserve Program Evaluation Group (GARPEG), chaired by Dr. Marrs, Deputy Assistant Secretary of Defense for Reserve Affairs. At this time, the GARPEG study has not been located.

A memorandum from the USAF Congressional Legislative Liaison Division to DoD's Legislative Reference Service dated 10 March 1972 makes reference to an Interagency Committee report dated 1 July 1971 that suggested full-time coverage of SGLI to reservists and retired reservists and that it be self-supporting.⁶ One of the recommendations concerned retired reservists:

Survivor protection is improved by permitting a member to participate in the Servicemen's Group Life Insurance (SGLI) program from entrance into the retired reserve until age 60 or election to participate in the proposed survivor benefit plan with commencement of retired pay.⁷

Full-time coverage for reservists is proposed:

Full-Time SGLI coverage is being sought for the reserve forces.

Extension of full-time SGLI coverage has been identified by the reserve forces as an important element in the recruitment and retention incentive package that they believe will enable them to achieve their personnel goals in a no-draft environment. The principal attraction to the individual is the low cost of the rather substantial coverage provided by SGLI.⁸

These conclusions are in line with the legislation as introduced by the Congress. If DoD submitted a proposal to Congress based on the report, it can be assumed it was done informally and not as an official recommendation. The Civil Service Commission, Veterans Administration, or the Office of Management and Budget - the other participants in the study - might have made the recommendations to Congress. Montgomery and/or the Veteran's Affairs Committee of the House could have received the recommendations of the report directly or indirectly from a National Guard or Reserve organization interested in Survivor Benefits or perhaps determined the need for legislation themselves as a result of reading the Interagency Committee's report. It should be noted that the

Senate report accompanying the final bill made reference to the testimony of Dr. Marrs, concerning the Interagency report.⁹ It cannot be concluded from this reference that the origin of the legislation two years before was based on this report. Identifying the specific source of the legislative proposal could possibly shed light on the original intent. It would probably be identical with the Congressional intent as it was expressed in the legislative history.

The legislative record does show a dependence upon the value of the insurance as a recruiting and retention incentive. Even the retirement coverage is perceived to be an incentive to stay in the reserves. The following excerpts from the record make reference to both formal and informal studies used. And, Representative Montgomery has said:

I think we are all aware that in the event we are faced with an emergency situation, the draft will be the last means of resort, not the first. The Reserves will oversee the call-up and we must ensure that the strengths are adequate to meet any situation.

Numerous formal and informal surveys have been conducted in recent years on why people join the Guard and Reserve and what actions might encourage more people to do so. A national Gilbert Youth Survey conducted for the Department of Defense on the attitudes of civilian youth towards military service found that in a "no draft" situation 15 percent of those surveyed would be attracted by the incentive of Servicemen's Group Life Insurance. Surprisingly, 9 percent of the survey listed full-time insurance coverage as their first preference among various recruitment incentives.

As to retention of existing personnel, another survey, entitled "Maintenance of Reserve Components In A Volunteer Environment," conducted by Research Analysis Corporation for the Department of Defense found that 27 percent of our Army National Guard personnel and 23 percent of the United States Army Reservists would re-enlist based upon the incentive of SGLI insurance coverage. ¹⁰

"The Department of Defense has the results of several surveys which indicate that recruitment and retention will be favorably influenced if full-time insurance coverage were provided at nominal cost"... I might add that studies conducted by our own organization (NGA) give a similar assurance of productive results. ¹¹

Senator Hughes. I have just three or four questions. Do you happen to have any studies which support the statement that all of you made that SGLI would be a significant incentive to recruitment and retention of personnel?

General McMillan. We have made studies, Mr. Chairman, in the various States, and we have questioned guardsmen and we have talked with guardsmen at all levels in all the States.

This is a consensus of opinion among everybody I have talked to in the National Guard, which are all the leaders and they have talked with their people at all levels. And there is no question in our minds, sir, that this would be a very, very significant incentive.

(deleted, testimony continues)

General McMillan. Mr Chairman, we feel very strongly that the time to do what we can is now. We have had studies in the past and the attitude of waiting until we can wrap up the whole package - this is a piece of legislation, sir, that won't cost the Government anything. And we feel very strongly that it will help us some right now and we are in the position where we need the help right now, and we, therefore, feel I think very strongly that we should - we would ¹² urge the committee to proceed with this legislation.

Senator Hughes. You testified quite emphatically that this coverage is needed.

Dr. Marrs. I have no reservations on that at all.

Senator Hughes. The staff informs me that in 1971 several surveys both of the civilian population and members of the Reserve and National Guard were conducted by the Department of Defense concerning enlistment and retention inducements. Could you tell us what the surveys revealed concerning the inducement value of insurance under discussion today.

Could you also supply us for the record with a copy of those surveys and analyses as they relate to this question?

Dr. Marrs. Well, you and other people who are more deeply informed in insurance might not be surprised as I was by the survey but in several surveys we found that the youngsters 17, 18, and 19 years old were very emphatically interested in insurance as an aspect of security.

I have had explained to me that this is the result of better understanding of the entire Nation of the value of good insurance programs.

We can provide you with some specifics on those surveys.

Senator Hughes. I would be appreciative if you would.

Dr. Marrs. Senator Hughes, there have been a number of studies and surveys conducted during the past few years on why people join the Guard and Reserve and what actions might encourage more people to join the Guard and Reserve. I am providing for the record excerpts from these studies which indicate the relative importance of insurance as a recruiting and retention incentive.

In addition to the formal surveys, we have had some additional indications. On May 31, 1973, my Army Reserve mobilization deputy, Brigadier General Myron S. Lewis, visited the 95th Division (Training) during its

active training at Fort Polk, Louisiana. In his report to me, General Lewis reported on a one-hour meeting with the Division Commander, his staff and the battalion commanders in which the group discussed ways and means of improving manning. There was some question raised as to the value of initiatives such as shorter term enlistments and higher pay, but there was a consensus on the value of a number of other items including exchange privileges, retirement reform and educational assistance. General Lewis' report to me shows that these commanders consider that "SGLI is believed to be an excellent asset for both enlistment and reenlistment."

Another source which I used in taking the temperature of the Guard and Reserve in the field is a group of junior officers and enlisted personnel who meet periodically in the Pentagon as the Guard and Reserve Ad Hoc Communications Group. These are very knowledgeable people, intimately involved in recruiting in their home-town units, and ranging in rank from E-3 to O-4. They represent all the DOD Guard and Reserve Components. At each of their meetings, after they have gone through a couple of days of study and discussion of topics which we place before them, I take the opportunity to spend an hour or so just chatting with them - pumping them, if you will - to obtain their personal judgments on what is right and wrong with our policies for the Guard and Reserve. Each time I have met with them, they have assured me that SGLI as it stands today is one of the most effective selling points in persuading a man to enlist or extend his enlistment and that expansion of SGLI to provide full-time coverage for members of the Selected Reserve would make it an even more valuable selling point.

The official and statutory body for providing advice on Reserve Forces policy is the Reserve Forces Policy Board in the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs. At its May 1971 meeting, the Board concluded that, at a minimum, certain incentives should be emphasized in order to retain manpower resources in the Guard/Reserve Forces. Among these were "Individual and family plans, including life insurance (SGLI) survivors' benefits and retirement options." A recent informal survey conducted by the RFPB among 4,200 unit members confirmed the Board's conclusion. When asked what would provide the greatest incentive for continued voluntary participation in the Guard and Reserve, with one of the choices being

"improve fringe benefits (exchange privileges, life insurance, medical benefits), 14% of the respondents selected this as their first choice, 16% as their second choice, and 15% as their third choice.

(Subsequently, the Department of Defense submitted the following information:)

Excerpt (from a DOD study accompanying the hearing)

Servicemen's Group Life Insurance

The issue of life insurance coverage and associated retirement benefits is politically very visible. The Interagency Committee which conducted the retirement study consisted of the Assistant Secretary of Defense for Manpower and Reserve Affairs (Chairman), the Administrator of Veterans Affairs, the Chairman of the US Civil Service Commission, and the Assistant Director, Office of Management and Budget. Twenty-four associations representing AD and reserve personnel, retired personnel, and Uniformed Services dependents and survivors were contacted, and 22 statements were submitted.

Our survey results indicated that 27 percent of ARNG personnel and 23 percent of USAR personnel in units would reenlist based on this insurance coverage incentive. The Gilbert Youth Survey of civilian youth indicated that 20 percent would be attracted by this incentive with the draft and 15 percent without the draft.

Whether the insurance industry will make an issue of the extension of low-cost insurance coverage to reservists remains to be seen. A similar proposal to extend coverage to cadets at the Service academies has been held up because of this industry objection. In addition, the military-oriented associations may object as their position is that they can and do fill this need.

A point to be advertised, perhaps, is that the government, as an employer, is probably unique in extending this coverage to its "part-time" workers. In general, part-time employees receive few of the benefits paid to full-time members of an organization.

The provisions of the legislation extended SGLI eligibility to reservists 24 hours a day, every day, and not just during military duty for reservists who are members of reserve (and Guard) units. Eligibility for full-time coverage was also given to retired reservists who have not attained the age of sixty. Coverage to \$20,000 was made available for everyone in the service, active and reserve. A reservist, on retirement, may elect conversion to an individual policy from one of the participating insurance companies instead of continuing coverage under SGLI. At age sixty (or sixty-one) there is no option to convert the policy.

The Veterans Administration Insurance Program Management Office in Philadelphia supervises the program. Prudential Life Insurance of America holds the contract and administers the program, reinsuring with 620 or so insurance companies. DOD collects the premiums from the reserve forces and forwards them to the Veterans Administration. The Veterans Administration, using standard accounting procedures, deducts from the premium their costs of administration and forwards the balance to Prudential. No provision is made by DOD for its expenses. Basically, the program is self-supporting. The major potential cost to the government is the war risk coverage which is contingent upon war-related deaths. During the Vietnam era the insurance companies were reimbursed by DOD for war-related deaths. The federal government has reserved the right to determine whether a person is covered by SGLI because of the difficulty in making government records available to private companies.

REFERENCES

- 1 88 Stat 165 (1974); PL 93-289
- 2 119 Cong. Rec. 10959 (1973)
- 3 118 Cong. Rec. 4247 (1972)
- 4 119 Cong. Rec. 14386 (1973)
- 5 Hearing before the Subcommittee on General Legislation of the Committee on Armed Services, United States Senate, 93rd Cong. 2d Sess., on S 383, p. 12 (March 22, 1974)
- 6 This study has been located in "Army Studies" at the Pentagon Army Library. ("Report to the President on the Study of Uniformed Services Retirement and Survivor Benefits by the Interagency Committee," July 1, 1971.)
- 7 Ibid, p. 3-3
- 8 Ibid, p. 6-4
- 9 S. Rept. 723, 93rd Cong. 2d Sess., P. 17 (1974)
- 10 S. Rept., 723, 93rd Cong. 2d Sess., pp 14, 15 (1974)
- 11 Hearings before the Subcommittee on Insurance of the Committee on Veterans' Affairs, House of Representatives 93rd Congress on HR 825 and similar bills, p. 397 (March 28, 1973)
- 12 Hearings before the Subcommittee on Housing and Insurance of the Committee on Veterans' Affairs, US Senate 93rd Congress on S. 1835 and related bills pp 593, 594 (May 23, 1973)
- 13 Hearings on S. 1835 pp. 639 to 643 (June 12, 1973)

VETERANS GROUP LIFE INSURANCE (VGLI)

Legislative Authority: Veterans Insurance Act of 1974,
88 Stat 165 (1974); PL 93-289.

Purpose: To describe the legislative history of extending
life insurance coverage to veterans released from active duty.

Background: The Veterans Insurance Act of 1974 provided
Veterans Group Life Insurance (VGLI) to veterans released
from active duty and provided greater coverage to reservists
and retired reservists (not receiving retirement pay) through
Servicemens Group Life Insurance (SGLI).¹ The legislative
purpose of VGLI was to provide low-cost insurance to Vietnam
era veterans during the readjustment period (five years)
following their separation from active duty.²

VGLI is closely patterned after SGLI.³ It is a 5-year,
non-renewable, term insurance available in units of \$5,000 to
a maximum of \$20,000. The August 1977 premium rate for persons
under 35 is the same as for SGLI, that is, 85 cents monthly for
each \$5,000 unit. The rate for persons 35 or older is \$1.70
monthly for each \$5,000 unit. To obtain VGLI, an individual
must apply for it and pay the first premium within the period
of his existing SGLI coverage (i.e., normally, within 120 days a
after separation).

VGLI takes effect on the day following the expiration of SGLI coverage. Premiums have to be paid by the insured directly to the office established by the insurer to administer the program. An insured whose VGLI is in force at the end of the 5-year period has an enforceable right to purchase an individual policy of permanent insurance in an amount equal to his VGLI coverage, without a medical examination and written at standard rates regardless of health, from any private insurance company in the program.

While the intent of VGLI is not to benefit reservists, VGLI could apply to reservists who leave active duty if the reservist returned to a reserve unit; however, he would be eligible also for coverage under SGLI. If a reservist received coverage under both laws, each program having a maximum coverage of \$20,000, his estate would only be able to collect a total of \$20,000 from both programs. Members of the Retired Reserve are not eligible for VGLI.

REFERENCES

- 1 88 Stat 165 (1974); PL 93-289 P. 17
- 2 S Rpt 723, 93rd Cong. 2d. Sess., (1974)
- 3 Ibid
- 4 Ibid, p. 25

THE SURVIVOR BENEFIT PLAN AS APPLIED TO RESERVISTS

Legislative Authority. 10 USC 1447 - 1455

Purpose. To determine the legislative history of providing benefits to dependent survivors of personnel of the reserve components¹ of the armed forces².

Background. The first time personnel of the armed forces were authorized to leave any portion of their retired pay to surviving dependents was in 1953. The Department of Defense stated to the House Committee on Armed Services in May of that year:³

. . . the benefits now available to the dependents of military persons who die while in a retired status are extremely meager. The maximum that a widow of a retired member may receive who has no minor children would be \$75 a month if her husband died from a service-connected disability incurred in time of war or \$60 a month if he died from a service-connected disability incurred in time of peace. The widow of a retired member would receive but \$48 a month if her husband had a wartime disability but that disability was not the cause of his death and then only if her income was less than 1,400 a year. Dependent children add to these benefits a small amount, which ceases when the children become 18 years of age. Thus the surviving dependents of a great many retired members of the Armed Forces who may have served long and honorably are entitled to no benefits because of that service.

The lack of benefits for survivors had been known for some time; a House Report of June 1953 stated:⁴

The need for more adequate benefits for the survivors of retired uniformed personnel....was recognized to be a pressing problem as long ago as 1933.... In 1947 the interservice committee on pay and allowances...prepared a report dealing in part with this subject.... In 1948 a bill was introduced.... With the appointment of the Hook Commission, legislative action was held in abeyance.... The Hook Commission, however, did not touch on this subject and, therefore, the Department of Defense prepared legislation Hearings were held...the subcommittee returned the bill to the Department... for improvement and clarification.

In 1951,...a revised bill (H.R. 5594) was introduced by Mr. Kilday and hearings were held.... Mr. Kilday's subcommittee did not report...to the full committee but,...Mr. Kilday introduced H.R. 8426 H.R. 8426 limited itself to providing...options for the survivors of retired personnel....consultations were held throughout the summer of 1952... certain technical changes...were made... resulting in the introduction of H.R. 8521.... Hearings were held...and... testimony was...introduced...which fully demonstrated the need for the legislation and the actuarial soundness of the plan.

The Uniformed Services Contingency Option Act of 1953⁵. established a plan whereby each military member of the Regular and Reserve components could elect to receive, upon entering a retired status,⁶ reduced amount of his retired pay during his

lifetime in order to provide an annuity for his surviving widow, surviving child or children, if unmarried and under 18 years of age, or unmarried and over 18 years of age but incapable of self-support because of being mentally defective or physically incapacitated and that condition existed prior to his reaching 18 years of age; or surviving widow and children.⁷ The annuity amount, expressed as a percentage of the reduced amount of his retired pay, was equal to 50, 25, or 12½ percent of the reduced amount of his retired pay.⁸

The basic premise was that the system operate on the basis of no additional cost to the Government other than for minor expenses -- using an actuarial equivalent method; therefore, the cost of the benefit was reflected in a reduced annuity to the member.⁹

The precise cost to each member depended upon the percent of annuity chosen, the age of the retired member at retirement or election age of the widow, and the age of the youngest child.¹⁰

The amount of deduction from the member's retired pay was subject to taxation, therefore, in a sense, a participating member had to pay taxes on income he had not received.¹¹

Annuities payable under the 1953 law were in addition to any pensions or other payments to which beneficiaries were entitled under provisions of other laws and were not to be considered income under any law administered by the Veterans' Administration.¹²

For a member of the Reserve component (and the Regular force),

the election of the percent of retired pay to be left to the survivors had to be chosen prior to completion of the 18th year of service and could be modified or revoked by the member only is accomplished five years before retirement. Once revoked, an election could not be modified or withdrawn.¹³

In 1956 the plan was renamed the Servicemen's and Veterans' Survivor Benefits Act and was codified into Title 10 United States Code.¹⁴

The Act of 1961¹⁵ changed the name of the program to Retired Serviceman's Family Protection Plan(RSFPP). It allowed a Reserve member (as well as a Regular) to elect to enter the plan at any time before he was retired or granted retired pay, provided the election was made at least three years before the first day retired or retainer pay was granted. If a person had made an election prior to completion of the 18th year of service, the three-year waiting period would not apply.¹⁶ The purpose of the change was to make clear that members of the Reserve components not on active duty would have the privilege of making an election at any time at least three years prior to the first day for which retired or retainer pay was granted, instead of the three year point prior to the time they were placed in a retired status without pay.¹⁷ Further, instead of non-modification or cancellation, the Act authorized the Secretary concerned to permit a retired member to withdraw from the plan because of "severe financial hardship".¹⁸

The Act of 1966 made the member's contribution from retired pay for participation in the plan exempt from federal income taxation.¹⁹

The Act of 1968 liberalized provisions of the RSFPP. A House report stated the purpose was "to encourage greater participation in the program for retiring service personnel."²⁰ It had been found that only 16 percent of those eligible had elected to participate.²¹

The Act permitted elections to become effective immediately if made prior to completion of the 19th, rather than the 18th year of service. It reduced from 3 to 2 years the period of subsequent duty required to make effective a post-19-year election, change, or revocation. It further allowed a member to change or revoke his election between his 19th year of service and his first day of retirement, without regard to the 2-years-of-subsequent-active-duty rule, if such a change or revocation did not increase the amount of the annuity elected.²²

It enabled a retired member to withdraw from the RSFPP or to reduce the amount of his annuity on his own application, beginning the first day of the seventh calendar month after the date he applied. Previously, withdrawals had been authorized only for severe financial hardship and reductions in the amount of an annuity had not been allowed.²³

The 1968 Act changed the annuity base from a member's reduced retired pay to his full retired pay. Instead of an election being limited to an annuity of either one-half, one-quarter, or one-eighth of a member's retired pay, the Act also authorized the election of an annuity in any amount specified by the member, provided the amount was not more than 50 percent, nor less than 12.5 percent, of his retired pay; but, in no case less than \$25 a month.²⁴

Further, when an eligible beneficiary (widow, child, or children, widow and children under 18, and children over 18 if unmarried and incapacitated) no longer existed, resoration of full retired pay was made automatically upon notification.²⁵

Added to the list of eligible beneficiaries were a member's children who were at least 18 but under 23 years of age and pursuing a full-time course of study or training at a recognized educational institution.²⁶

The Act of 1972²⁷ terminated the RSFPP for members retired on or after that date and created the Survivor Benefit Plan (SBP) to take its place. The new SBP was not a self-supporting program as before, but the Government was now to share the costs. A House report stated:

The subcommittee study showed that many present widows of career military retirees are living in conditions of great economic deprivation, and this is true not just of widows of lower ranked personnel but of the widows of senior officers and senior enlisted men of long and outstanding service.²⁸

RSFPP has proved a failure insofar as it was designed to provide general survivor protection to the retired military population. The law has been amended seven times over the past 17 years in an attempt to liberalize its provisions and make it more attractive to military personnel. The efforts have not been successful because of fundamental shortcomings in the plan, and only 15 percent of eligible military retirees have participated since 1953. This means that the survivors of 85 percent of deceased eligible retirees have no claim to any part of the member's military retired pay. Most retirees find it too expensive to participate, and this is particularly true of the lower paid retiree who needs the protection the most. For example, only 10 percent of the enlisted retirees participate, compared to about 20 percent of officer retirees.²⁹

The lack of basic survivor protection, which is a standard feature of most employee fringe benefit programs, public and private, and which is of particular importance to the military man because of his long period of retirement, is a glaring weakness in the singularly outstanding benefits program of the Armed Forces. The lack of a survivor benefits program based solely on the man's retired pay at a cost comparable to other systems, such as the civil service system, calls into question the retiree's inherent legal interest in his retired pay. The subcommittee believes the concept of retired pay as an earned right in which the retiree has a legal interest should be beyond challenge.³⁰

The subcommittee believes the Government, in recognition of these rights, has a moral obligation to join in providing income for his survivors.³¹

The maximum coverage available under the new Survivor Benefit Plan provided a widow or widower, and dependent children a survivor income to 55 percent of the retired pay of the retiree. Such a monthly payment was automatic unless the retiree had elected a lesser coverage or declined participation before becoming entitled to retired pay.

A member who did not have a spouse or dependent children could elect to join in the plan by naming another person as beneficiary (known as a party with an insurable interest); or, to participate later if he acquired a spouse or children after retiring; or, to change from an insurable interest to an acquired spouse or child; if the written election was made within one year after the dependent was acquired. The 1972 Act also introduced automatic cost-of-living increases in retired pay; the member's contribution to SBP went up the same percent.

Under maximum coverage, the whole of the member's retired pay was the base amount on which the survivor annuity was computed. Under less-than-maximum coverage, the base amount was any sum specified by the member between \$300 and the whole retired pay. A member whose monthly retired pay entitlement was \$300 or less

did not have a less-than-maximum option; his base amount had to be his whole retired pay.³³

A member's cost for spouse's coverage was computed at the rate of 2.5 percent of the first \$300 of his base amount plus 10 percent of the remainder of the base amount. The cost for children's coverage was determined actuarially. The cost of coverage for a natural person with an insurable interest was ten percent plus five percent for each full five years the designated individual was younger; the total cost was not to exceed 40 percent.³⁴

The 1972 Act authorized a gratuitous annuity for certain low income widows of retired military personnel. To qualify for this special annuity, a widow must (1) be entitled to a VA non-service-connected death pension; (2) have less than \$1,400 of annual income from other sources; and (3) be the widow of a retired member who died before September 21, 1973 (one year after enactment of this law) participating in the RSFPP or the new SBP. The annuity was payable in the amount needed to bring the widow's annual income from sources other than her VA death pension up to \$1,400.³⁵ Under the Veterans Administration pension system in effect in 1972, that supplementary payment, together with the VA death pension, would assure her an annual income slightly in excess of \$2,100.³⁶

There were certain restrictions: Once participation was in effect, the member could not withdraw from the plan unless accomplished before the date he first became entitled to retired or retainer pay.³⁷ While the retiree's contributions withheld from retired pay were exempt from federal income tax, subsequent SBP payments were not exempt from federal income tax. Annuities received under the SBP were reduced if the beneficiary was entitled to Dependency and Indemnity Compensation and/or Social Security survivor benefits.³⁸ A widow without children was eligible for a Social Security benefit at age 62. However, the SBP annuity of such a widow was reduced at age 62 by an amount equal to that part of her Social Security benefit attributable to the member's active military service after December 31, 1956. A widow with one child in her care was eligible for a Social Security benefit regardless of her age. The SBP annuity of such a widow was accordingly reduced by only that part of her benefit resulting from the member's active military service after December 31, 1956. The child was eligible for a separate Social Security benefit, but child's benefits had no effect on SBP annuities.³⁹

A widow with more than one child in her care was also eligible for a Social Security benefit regardless of her age. However, her SBP annuity did not have to be reduced. A House report stated:

. . . in these high-expense years when the burdens of raising a family are thrown wholly on the widow, the payment for the full 55 percent survivor annuity based on the husband's military retired pay plus the social security survivorship benefits is justified.⁴⁰

If the survivor were eligible for the Veterans' Administration dependency and indemnity compensation (DIC), because the member died on active duty or in retirement of a service-connected cause, the SBP annuity was payable only in the amount the annuity exceeded the DIC payment. If no SBP annuity was payable because the DIC entitlement was equal or greater, all SBP contributions made by the retired member before his death were refunded to the widow. If part of the SBP annuity was payable, the member's retired pay reductions were recalculated based on the lower annuity and the excess contributions were refunded to the widow.⁴¹

All persons on the retired rolls on the day before September 21, 1972, the effective date of the SBP program, were given the opportunity to enter the program during the following 18-month period. Those who were in the RSFPP program had three choices. They were permitted either to (1) drop their RSFPP if they elected SBP coverage in an equal or greater amount; (2) continue their RSFPP and also enter the SBP program provided the total of the two annuities did not exceed 100 percent of their pay; or (3) continue their RSFPP alone.⁴²

For the reservist, at least as early as 1970, the Defense Department recognized there was a "gap" in the protection provided by the military Survivor Benefit Plan. General Benade testified:

There is no procedure for reserve retirees to provide their survivors with an annuity, based on their military service, during the period after they are eligible to retire with 20 or more years of satisfactory service and before they begin to draw retired pay at age 60.⁴³

One possible solution to the gap in reservists' survivor protection might be an insurance-type coverage during the period between the time that the reservist completes 20 years of satisfactory Federal service and the time that he becomes entitled to retired pay at age 60. At age 60, retired reservists should be permitted to participate in whatever annuity plan is made available for retirees of the active establishment.⁴⁴

The National Guard Association recognized the gap and testified⁴⁵ to the need for change:

As has been emphasized before this Subcommittee, when a National Guardsman or Reservist, who has earned the right to retirement benefits, dies, his widow is not, under present law, entitled to any portion of the retirement benefit.

* * *

The National Guard Association of the United States has for many years considered this to be a deficiency in the existing law.

The House Armed Services Committee responded with a no-change comment:⁴⁶

Non-active duty Reservists would be eligible for participation in the program to the same extent that they are now eligible for retirement. That is, non-active duty Reservists who complete 20 years of satisfactory

Federal service and are, therefore, eligible at the time they commence drawing retired pay to designate a portion of that retired pay as an annuity for their survivors.

In 1972, Mr. Montgomery, of the House Armed Services Committee,
stated:⁴⁷

I know many Members have gotten letters from constituents who have been in the Guard or Reserves whose husbands die at 59½ or 58 years old, and they do not come in for any type of survivor benefits, the way the law is written now and the way I understand this legislation.

Mr. Bennett stated:⁴⁸

This is a special kind of sacrifice the reservist makes for a widow. At year 59½ she gets cut off and gets absolutely no benefits. Obviously this is something that should be corrected.

The Act of 1976⁴⁹ revised the SBP by: eliminating payments into the program when a beneficiary pre-deceased the retiree; reducing to one year the eligibility period for a new spouse of a retiree to be eligible under the Military SBP; permitting a retiree to leave benefits to children when there was a surviving spouse; increasing the minimum-income payment to specified widows from \$1,400 to \$2,100 annually. The increase from

\$1,400 to \$2,100 in the income provided widows an addition to what they would be eligible to receive from the Veterans' Administration and resulted in a minimum annual income of \$2,712.⁵⁰

Members of the House and Senate recognized there were several improvements to SBP that remained to be accomplished. The Senate Report, supporting passage of the Act of 1976, stated the House added a number of provisions which were not included in the committee version:

- (1) Cost of living adjustments for Retired Servicemen's Family Protection Plan annuitants;
- (2) Reduction in the so-called "Social Security offset" from 100 percent to 50 percent which is made under the military Survivor Benefit Program;
- (3) A number of other provisions relating to the "Social Security offset" when the beneficiary is not receiving Social Security benefits based on her husband's military service, when there is a dependent child, and when Reservists serve for periods of active duty of less than 30 continuous days;
- (4) Reinstatement of Survivor Benefit Program payments to widows whose Dependency and Indemnity Compensation benefits are terminated on remarriage after age 60.⁵¹

Closing the "gap" was not included as a suggested improvement in the 1976 Act

⁵² No action has been accom-

plished to date (September 1977). Thus, survivors or retired reservists who die before reaching age 60 receive no benefits from the Survivor Benefit Plan.

As of September 1977, the following bills relating to SBP have been presented to the Congress for consideration:

<u>Bill Number</u>	<u>Sponsor</u>	<u>Description</u>
HR 97	Montgomery, Nichols, Holt	To provide survivor benefits in case of death of certain members or former members of the Armed Forces who die before becoming entitled to retired pay for non-regular service.
HR 8975	Montgomery, Bowen, Guyer, Cochran, Lott	Same wording as HR 97.
HR 6797	Thone	Same wording as HR 97.
HR 9170	Brinkley, Byron, Monohan, Davis, Ichord, McDonald, Runnels	Same wording as HR 97.
HR 9171	Young, Andrews, Buchanan	Same wording as HR 97.
HR 9436	Yatron	Same wording as HR 97.
S-1996	Stafford, Ford, Laxalt, Leahy, Melcher	Same wording as HR 97.

HR 3702	Stratton, Bob Wilson	To authorize cost of living raises for widows covered by the old Retired Serviceman's Family Protection Plan. To modify social security offset provision--reduce offset to 50%.
HR 694	Stratton, Bob Wilson	Same wording as HR 3702.
HR 2385	Brinkley	Same wording as HR 3702.
HR 2686	Davis	Same wording as HR 3702.
S-623	Thurmond	Same wording as HR 3702.
HR 749	Bennett	To provide eligible for annuities persons who become widows during the 18 month period (instead of 12 months) following the effective date of such law (PL 92-425, September 1972).
S 520	Tower, Byrd (W.Va.)	To authorize cost of living adjustments of annuities under the retired serviceman's family protection plan and to provide that remarriage of a spouse at or after age 60 shall not result in termination of annuity.
HR 3202	Sikes	Same wording as S-520.
HR 4203	Mann	To provide an annuity for the dependents of persons who perform the service required under chapter 67 of title 10, United States Code, and die before being granted retired pay.

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4. Ibid, p 2 and 3
5. 67 Stat 501 (1953); PL 83- 239
6. To enter a non-disability retired status, members of the Reserve components are required to have completed 20 years of satisfactory Federal service under the provisions of Public Law 80 - 810, June 29, 1948 (62 Stat 181).
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11. House Report 89 - 1118, H.R. 268, 83rd Cong., 1st Sess., (1965) p 3.
12. 67 Stat 504 (1953); PL 83 - 239.
13. 67 Stat 502 (1953); PL 83 - 239
14. 70 Stat 857 (1956); PL 84 - 881
15. 75 Stat 810 (1961); PL 87 - 381
16. Ibid.
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21. Ibid, p. 6
22. 82 Stat 751 (1968); PL 90-485
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24. 82 Stat 752 (1968); PL 90 - 485
25. Ibid.
26. Ibid.
27. 86 Stat 706 (1972); PL 92 - 425
28. House Armed Services Committee Report 91 - 68, October 1, 1970, p 9515.
29. Ibid, p 9511
30. Ibid, p 9510
31. Ibid.
32. 86 Stat 708 (1972); PL 92 - 425
33. 86 Stat 709, 706; PL 92 - 425; Senate Report 92 - 1089 (includes H.R. 10670), 2nd Sess., (1972), p 50.
34. 86 Stat 710 (1972); PL 92 - 425
35. 86 Stat 712 (1972); PL 92 - 425
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39. 86 Stat 709 (1972); PL 92 - 425; Senate Report 92 - 1089., 2nd Sess., (1972), p 53
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41. 86 Stat 708, 709 (1972) PL 92 - 425; Senate Report 92 - 1089, S.R. 3905 (includes H.R. 10670), 92nd Cong., 2d Sess., (1972), p 52

42. 86 Stat 711 (1972); PL 92-425
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45. Ibid, p 9869
46. House Armed Services Committee Report 91-68, October 1, 1970
p 9526 - 9527
47. House Armed Services Committee Report 92 - 67, September 12,
1972, p 15062
48. Ibid, p 15063
49. 90 Stat 2375 (1976); PL 94-496
50. Senate Report 94 - 1328, H. R. 14773, 94th Cong., 2nd Sess., (1976)
p 3
51. Ibid
52. HR 96, January 4, 1977, Montgomery et al

INDIVIDUAL RETIREMENT ACCOUNTS (IRA)
FOR RESERVISTS

Legislative Authority: Tax Reform Act of 1976, 90 Stat 1520, 1738 (1976), PL 94-455; 26 USC 219 (1976 ed.)

Purpose: To determine Congressional intent for extending eligibility for IRA benefits to reservists.

Background: Prior to 1962, self-employed persons were not authorized a deductible expense on their Federal income taxes for monies they set aside to establish a retirement fund. In 1962, the Congress passed the Self-Employed Individuals Tax Retirement Act¹ which permitted seven-million self-employed persons to establish retirement plans². The law was designed to encourage the establishment of voluntary retirement plans by self-employed persons by extending to them some of the favorable tax benefits provided to employers in the case of Internal Revenue Service qualified retirement plans established for employees. To accomplish that purpose, self-employed persons were to be treated for retirement plan purposes as their own employers. As employers, self-

employed individuals were permitted, as other employers, to deduct (for Federal tax purposes) contributions made to pension or profit-sharing plans for the benefit of themselves and other employees covered by the plan. Employers were required to cover under the same plan all full-time employees with more than three years of service. As employees, they were not taxed on such contributions made for their benefit or the income thereon until they received the funds upon retirement. Benefits (i.e., withdrawals after retirement that would be taxed at the rate then applicable to the generally lower income) could not begin before age 59½, except for disability or death, nor later than age 70 ½. Further, upon termination of the plan, amounts contributed to the employees' accounts were non-forfeitable.

The Act permitted self-employed persons to contribute each year to a retirement plan for themselves to 10 percent of their earned income for that year, or \$2,500, whichever was
3
lesser.

The Senate report specified the types of retirement plans allowable:

The retirement fund which this measure allows self-employed persons to establish may be lodged with a bank as trustee (or as custodian if contributions are invested in stock of an "open-end" regulated investment company or in policies issued by an insurance company); it may

be invested in nontransferable annuities with an insurance company or in nontransferable face amount certificates; or it may be invested in a new series of U.S. Government bonds authorized for this purpose.

In 1974, the Congress found a lack of employee information and adequate safeguards concerning employee benefit plans. These plans had been afforded preferential Federal tax treatment, and many employees with long years of employment were losing anticipated retirement benefits owing to the lack⁵ of vesting provisions.

The result was passage of the Pension Reform Act of 1974 (also known as the Employee Retirement Income Security Act⁶ of 1974). It attempted to correct the shortcomings found by Congress. It required disclosing and reporting the pension's financial and other information to participants; established standards of conduct for fiduciaries of employee benefit plans; and provided for ready access to the Federal⁷ courts.

The Conference report defined employee pension benefit plan and pension plan to mean

any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program:

(A) provides retirement income to employees; or; (B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.⁸

In addition, the Act allowed an individual, not otherwise covered by a retirement plan, to establish an Individual Retirement Account (IRA). The individual could deduct from his Federal taxes the actual amount of his contribution to the individual retirement program, 15 percent of the compensation⁹ includable in his gross income, or \$1,500 whichever was lesser.¹⁰

The eligible individual could make such deposits to his IRA each year beginning in 1975. After the individual reached, 70½ years of age, no deductions would be permitted and dis-¹¹tribution of the IRA must be commenced, but not before age¹² 59½.

The individual could not establish an IRA if he participated in the following already authorized retirement plans:

1. A qualified pension, profit-sharing, or stock bonus plan of an employer;
2. A qualified annuity plan of an employer;
3. A qualified bond purchase plan of an employer;
4. A retirement plan established by a government for its employees (such as the Civil Service Retirement System, or the military retirement plans, including Title III retirement reservists);

5. An annuity contract purchased by certain tax exempt organizations or public schools;
6. A qualified plan for self-employed individuals authorized by the Self-Employed Individuals Tax Retirement Act.¹³

The 1974 Act prohibited reservists from establish IRA's, because reservists were considered to be participating in a U.S. government military retirement plan, i.e., Title III reserve retirement. Since many reservists serve less than twenty years in the reserve, they do not qualify for Title III reserve retirement. Thus, many individuals in the reserves who would never receive Title III reserve retirement were also denied the benefit of owning an IRA. Therefore, this restriction worked a hardship on these reservists.

This apparent inequity was addressed in legislation introduced in the House in 1975 during the first session of the 94th Congress. Congressman William Armstrong of Colorado introduced a bill¹⁴ to provide reservists specific relief from the restriction of the Pension Reform Act of 1974. The Congressman stated that he believed that the Pension Reform Act of 1974 contained an "obvious oversight" creating "a little noticed inequity which should be remedied."¹⁵

The Employment Retirement Income Security Act of 1974 was a massive piece of legislation. Because of its length and complexity, many implications could not have been predicted. With the passage of time, it soon became apparent that a group -- reservists -- were particularly singled out for unequal, but unintentional treatment.

In arguing for a change, Congressman Armstrong stated:

In the first place, the law is unfair, and unjustly penalizes any self-employed individual who belongs to a Reserve unit.

In the second place, such a law will make the Reserve forces less attractive, and may in fact force reservists to choose between the Reserve unit and an adequate retirement.

Self-employed individuals make a vital contribution to both our culture and our economy -- and to penalize those who are in the Reserve forces for their loyalty, when self-employed Americans are already among the most harrassed and regulated members of society, is certainly not equitable.¹⁶

Congressman Armstrong's bill was short and concise in amending the Internal Revenue Code of 1954. Basically, it provided that:

members of a reserve component of the Armed Forces will not be disqualified from taking the deduction for retirement savings because of their participation in the Armed Forces retirement system.¹⁷

The amendment further provided that benefits would accrue to reservists in taxable years beginning after December 31, 1975. However, Congressman Armstrong's bill failed to become law.

House bill, HR 10612, which was introduced by Congressman Al Ullman in 1976 and eventually became the Tax Reform Act of 1976 did not contain a provision to allow reservists to participate in IRA. The Senate, however, amended HR 10612 to permit reservists to participate in IRA.¹⁸ The Senate Report accompanying the amended bill provides an excellent rationale for remedying the past inequities for reservists. Essentially, the report paralleled Congressman Armstrong's arguments advanced during his unsuccessful efforts.¹⁹ The Conference Committee accepted the Senate amendment for inclusion in the Act,²⁰ and the law was enacted on October 4, 1976, erasing that inequity.²¹

The legislative history as well as the passage of the Tax Reform Act of 1976 clearly document that the Congress desired to permit reservists who usually do not remain in the service for twenty years (and thus become entitled to Title III reserve retirement) to enjoy the benefits of owning an IRA. Therefore, the law allows a reservist to participate in, and receive retirement benefits from, both an IRA and Title III reserve retirement.

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- 1
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- 2
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p 3
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- 4
Ibid, p 3
- 5
S. Rept. No. 1090, 93rd Cong., 2d Sess. (1974)
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- 6
88 Stat 829 (1974); PL 93-406
- 7
S. Rept. No. 1090, 93rd Cong., 2d Sess. (1974)
pp 1-2
- 8
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p 8
- 9
In accordance with 26 U.S.C. 401 (j)(5)(c) (1976 ed) compensation means the earned income of an individual or the compensation received or accrued by an individual from the electing small business corporation. 26 U.S.C. 401 (c)(2)(c) states earned income means the net earnings from self-employment; i.e., the gross income derived from the trade less allowable deductions (26 U.S.C. 1402(a)).
- 10
88 Stat 958 (1974); PL 93-406
- 11
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- 12
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88 Stat 1015 (1974); PL 93-406

- 14
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- 15
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- 16
Ibid.
While the extract from the Congressman's testimony is correct that a reservists could not establish an individual retirement account since as a reservist he had a retirement plan established by the Federal Government, this situation should not have occurred to self-employed persons for they were authorized to establish their retirement plans under provisions of the Self-Employed Individuals Retirement Tax Act of 1962, as mentioned in the text. Rather, the group of personnel most effected were employees of companies that had no retirement plans.
- 17
Ibid
- 18
S. Rept. No. 938, Part I, 94th Cong., 2nd Sess., (1976),
p 450
- 19
Ibid
- 20
H. Rept. No. 1515, 94th Cong., 2nd Sess., (1976)
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- 21
90 Stat 1520, 1738 (1976), PL 94-455, Sec. 1503: Participation by Members of Reserves or National Guard.....in Individual Retirement Accounts, etc. - (a) General Rule.- Section 219(c) (relating to definitions and special rules for retirement savings deduction) is amended by adding at the end thereof the following new paragraph:
"(4) Participation in Governmental Plans by Certain Individuals.-
"(A) Members of Reserve Components.-A member of a reserve component of the armed forces (as defined in section 261(a) of title 10) is not considered to be an active participant in a plan described in subsection (b) (3)(A)(iv) for a taxable year solely because he is a member of a reserve component unless he has served in excess of 90 days on active duty (other than active duty for training) during the year.

RCSS
Legislative History
1 February 1978

DEPENDENCY AND INDEMNITY COMPENSATION

Legislative Authority: 38 USC 401-423 (1976ed)

Purpose: To describe the significant legislation providing Dependency and Indemnity Compensation to survivors (including widows, children, and parents) of deceased reservists

Background: In the event of death during peacetime, compensation of half-pay for five years was authorized for the survivors of officers by the Act of March 16, 1802.¹ Similar coverage was expanded to enlisted personnel and the militia in active service in 1836.²

For those disabled and for the survivors of those who died of service caused disease or injury a special burden of care was assumed; yet, for those who were aged and disabled through non-service-connected causes and for the widows and orphans of those dying of non-service-connected disabilities who became in need, the Nation's conscience dictated an honorable measure of assistance.

The older programs were in tune with their times and related to an agrarian and factory work force. Support was predicated on a need growing from inability to do laboring work in a society with no broadly based employment insurance or old age and survivors insurance programs.³

As times changed, needs of veterans and survivors changed also.

The Servicemen's and Veterans' Survivor Benefits Act of 1956 comprehensively reformed the survivor programs for the military including the areas of death gratuity (see Death Gratuity paper),

Old Age and Survivors Insurance (see FICA paper), and Dependency Indemnity Compensation (DIC), the subject of this paper.⁴ A Senate Report of 1956 seems to describe the comprehensive changes quite neatly.

The bill would eliminate the present wartime-peacetime differential in rates payable for servicemen's death. It would change the basis for payment to widows from the present flat rate for all to one determined by rank or pay grade of the deceased serviceman. . .

Generally, the bill would revise upward compensation payable to widows of servicemen who die on or from "active duty," "active duty for training," or "inactive duty training" after December 31, 1956. Widows now on the rolls may elect to retain their present status in highly exceptional cases where that may be more advantageous. In the great majority of cases, based on deaths before January 1, 1957, where widows elect to "take" under the new provisions, the applicable basic pay would be that for the rank held by the deceased husband under the pay schedule in effect January 1, 1957.

Under the bill the definition of "widow" would be uniform and generally more liberal than the definition under existing law. As a rule, with few exceptions, the amount paid the widow with children would not be increased on account of additional children after two. Remarriage of the widow would, as at present, stop compensation payments.

Compensation rates for children where there is no eligible widow will be payable in uniform amounts without relationship to the military pay grade of the deceased father. These rates are slightly higher than the existing rates for children....

Current definitions of children are not changed. The basic age limit is 18 years, except for helpless children over 18 and of children attending school between the ages of 18 and 21.

The bill would provide supplemental compensation by the Veterans' Administration of \$25 to an orphan child who is helpless and over 18 years of age in addition to the basic rate to such a child. The bill would also provide payment to a helpless child over 18 where there is a widow; this payment would be made concurrently with the payment of compensation to the widow.

In a case involving an eligible widow with a child between 18 and 21 attending school, the child would be paid \$35 monthly compensation in addition to payments to the widow.

Payments to parents would be changed to a sliding-scale basis with 15 rates. The rates range from \$10 to \$100 per month. (Under the present law there are 4 rates: peacetime - \$60 in the case 1 parent and \$64 where there are 2 parents; wartime - \$75 and \$80.

Rates paid a single parent would be controlled by the parent's annual income. The income scale on which payments may be based ranges from \$750 per year to \$1,750 per year. The rates of monthly compensation follow the scale in inverse order, ranging from \$75 per month to \$15 per month. The range for 2 parents living together would run from \$50 each where the combined income is \$1,000 or less to \$10 each if the combined income is as high as \$2,400. There are variances where parents are living apart.

Under existing law a parent may receive compensation if his income does not exceed \$105 per month. Where there are 2 parents compensation may be paid if their combined income does not exceed \$175 per month. Government insurance and any other payments from VA based on disability or death are not included as income.

The bill defines income as all payments received by the parents from any sources except death gratuity, donations from relief organizations, payments of veterans disability compensation and death compensation on account of other deaths, lump sum payments for burial paid by social security, and unusual medical expenses.

Widows, children or parents eligible for compensation based on a death prior to January 1, 1957, may elect to take the compensation under either existing veterans laws or under the provisions of this bill. Parents who cannot qualify for compensation under present law because of excessive income might qualify for a pro rata amount under the bill.

The right of election to the new compensation rates under the bill could not be exercised if a beneficiary now on the rolls continued to receive servicemen's indemnity (free insurance) payments. But the election could be made after the 10-year period during which such insurance payments are made, or upon waiving the indemnity payments.

Receipt of Government insurance (contract) payments, as distinguished from indemnity insurance (free insurance), would not present election or require an offset.⁵

Broader coverage was given to National Guardsmen and reservists under this law.

Like the present law, the bill covers deaths resulting from active duty or active duty for training, but effective January 1, 1957, it would extend new coverage for death resulting from injury sustained by reservists or national guardsmen while proceeding to or returning from training pursuant to order by competent authority.

This extended coverage would likewise apply with respect to travel to or from active duty training, without regard to whether travel was specifically authorized. One effect of the provision would be to cover cases of death from injury while enroute to weekly drill (inactive duty) training periods.

The bill would extend coverage to national guardsmen dying from disease incurred on active duty training of less than 30 days. Such coverage is now limited to death from injury.⁶

Also the Federal Employees' Compensation Act coverage for reserve officers for peacetime benefits would be repealed as of January 1, 1957. Where death occurred prior to January 1, 1957 survivors could elect to take under this bill or under the Federal Employee's Compensation Act (FECA).⁷

The Veterans' Pension Act of 1959⁸ reformed certain inequities discovered in the law through extension hearings. Among other changes, the law provided

... a fairer test of need; provide(s) the same eligibility requirements for widows and children of veterans of World Wars I, II, and the Korean conflict; and preserve(s) to those persons on the rolls on the effective date of the bill the right to so remain.⁹

This test placed more emphasis on "need" than on "indemnity" (compensation for the future loss of income) for if outside income were greater than one of the three levels, a greater amount of the pension was reduced rather than the "all or nothing" system. No one would receive less under the new law than before.

In 1961¹⁰ Congress corrected a minor inequity by allowing widows of veterans "whose deaths are due to service connection will not be less generous than benefits payable to widows of veterans whose deaths were nonservice connected."¹¹

Congress increased DIC rates by 10 percent to children and parents of deceased veterans on 1963.¹² Unlike the widows' rates, these rates were not automatically increased with basic pay.¹³

Congress provided increases averaging 10 percent in 1965. Also the definition of "child" was liberalized.¹⁴

A 1966 law allowed widows with children to receive payment of DIC in an amount equal to any greater amount of death pension which would have been payable to the children had they been otherwise eligible.¹⁵ Later the same year benefits were increased to children and parents of deceased veterans.¹⁶

Increases in benefits and income limitations to receive benefits were made since an increase had not been made in these areas since 1963. A cost of living increase in excess of 4 percent occurred in that span of time.¹⁷

In 1968 Congress substantially increased DIC payments and income limitations for receiving benefits and provided a more flexible scale of benefits as income increased.¹⁸ Present Social Security increases had resulted in the denial of benefits to surviving widows and parents by placing them above the maximum income, eligibility for DIC, nullifying the purpose in the Social Security increase.¹⁹

Two laws were past in the 91st Congress that related to DIC. One law allowed on adopted child to be covered before final adoption.²⁰ The DIC rates for dependent children were also increased.

The second law raised the DIC rates, especially for those survivors of lower rank.²¹

By law monthly dependency and indemnity compensation payments are paid to the survivors of servicemen and veterans whose death is related to their military service. As the name implies, the purpose of the payments is to provide at least financial compensation for the loss suffered by these survivors. Thus dependency and indemnity compensation payments to widows and orphans are not based on the survivors' needs.²²

Thus a greater emphasis was placed on "need" than before. Congress found that survivors of a large number of lower ranking young servicemen killed in Vietnam had increasing problems in keeping up with the cost of living.²³

Another increase in benefits and income limitation was made in 1970. Also certain income sources were excluded in determining

DIC payments.²⁴ The new Social Security increases would have adversely affected the benefits received by many survivors.²⁵

In the last month of 1971, Congress further increased DIC payments because of inflation.²⁶ Also, a new formula to compute the income limitation was added to obviate legislated adjustments upon Social Security.²⁷ This formula prevented survivors from losing more money from their DIC benefits than gained in outside income such as Social Security payments.

Congress authorized increases in 1973 in response to the erosion of purchasing power from inflation.²⁸ A proposal to give Social Security increases special treatment so as not to reduce benefits was rejected. The formula under the 1971 law was found to be satisfactory in that it gradually reduced benefits as outside income increased, thus following the principle of payment according to need.²⁹

In 1974 another adjustment for inflation was legislated in the Veterans Disability Compensation and Survivor Benefits Act of 1974.³⁰ An automatic adjustment for inflation was rejected since Congress wanted to monitor this area closely.³¹ Also minor changes were made to liberalize payments.³²

The Veterans and Survivors Pension Adjustment Act of 1974 increased the rates and income limitations.³³ Congress expressed concern for a major overhaul of the system. The Administration had repeatedly asked for reforms that would emphasize "need" as opposed to "indemnity."³⁴

The Veterans Disability Compensation and Survivor Benefits Act of 1975 increased DIC benefits because of inflation.³⁵ Congress expressed concern about the rigid interpretation by the Veterans Administration of their law and regulations concerning benefits.³⁶

The Veterans and Survivors Pension Interim Adjustment Act of 1975 temporarily raised the DIC benefits and the levels of income exclusion.³⁷

On September 30, 1976, two laws were passed by Congress in the area of Veterans Benefits. The Veterans and Survivors Pension Adjustment Act of 1976 made permanent the previous temporary increases in benefits and income limitations.³⁸ The Veterans Disability Compensation and Survivor Benefits Act of 1976 increased DIC benefits and income limitations because of inflation.³⁹ Congress also directed the Veterans Administration to determine whether benefits should continue to be based on service grade.⁴⁰ The present system is modified by need requirements which reduce pensions to those who have higher incomes. In turn, certain income is excluded from computation which benefits survivors of higher grade servicemen. Thus the present law is based both on indemnifying a survivor's loss of income and compensating a survivor's needs resulting from the loss of support of the serviceman.

Currently, DIC is payable to the survivors of military personnel who die in line of duty while on active duty, active duty for training (such as summer camps or short tours), inactive duty training (such as weekly drills), including travel to and from active duty for training and inactive duty training, with the Armed Forces. DIC is also payable when death occurs following the performance of service mentioned above as a result of a service-connected disability. The Veterans Administration administers the program.

The rate of DIC applicable is determined by pay grade at death while in active service. For the veteran, the pay grade upon separation is used. The services determine pay grade applicable. Amounts payable to a widow will cease upon remarriage, but will continue for eligible children. Also a special allowance is given to the widow if she is blind, in a nursing home, etc. A child may also receive benefits beyond age 18 if he or she becomes permanently incapable of self-support before age 18. Dependent parents may also be eligible, depending upon their income from other sources.⁴¹

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- 5 S. Rpt 2380, 84th Cong, 2d Sess, pp 2 and 3 (1956)
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- 12 77 Stat 17 (1963); PL 88-21
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- 30 88 Stat 180 (1974); PL 93-295
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11 November 1977

THE DEATH GRATUITY AS A BENEFIT FOR RESERVISTS

Legislative Authority:

10 USC 1475 - 1480 for Reservists
32 USC 321 for National Guard
38 USC 106(d) for Veterans
70 Stat 868 (1956); PL 84-881

Purpose: To describe the legislative intent underlying the death gratuity benefit and its extension to reservists.

Background: This paper will, perforce, deal with the death gratuity benefit in isolation. Obviously, as with any other benefit, it was developed to meet a perceived need. It did not exist in isolation at the time it was conceived and implemented; it has been modified through time; it exists today as but one of many benefits to survivors of active duty service personnel and certain reservists. When first instituted, the death gratuity was seen as a substitute for life insurance that companies would not sell to servicemen. Later, largely through Federal pressures, financial guarantees and subsidies, insurance coverage was made available and then automatic. Life coverage was increased from \$3,000 to 5 to 6, 10 to 15, and now to \$20,000. During the same period, the death gratuity, originally established at the equivalent of six months' pay in 1908, from \$90 to \$4,000, rose with periodic pay increases

from \$468 to \$7,656 by 1956. The judgment of Congress that year was the sums were both too small and too large. Congress set an \$800 minimum and a \$3,000 maximum that continues today, more than twenty years later. (Had that restriction not been imposed, the October 1977 range for six months death gratuity would have been \$2,400 - \$24,000.)

The death gratuity, as a lump-sum payment made to the survivor of a service member, has a legislative root less than 70 years long. It was first enacted by the Congress in 1908 as an provision in the annual Army appropriations bill.

. . . upon . . . death from wounds or
disease contracted in line of duty of
any officer or enlisted man on the
active list of the Army . . . shall
. . . (pay) to the widow . . . an
amount equal to six months' pay . . .
less seventy-five dollars in the case
of an officer and thirty-five dollars
in the case of an enlisted man . . .
for expenses of interment . . .
(Emphasis added)¹

The rationale for the six months' pay, as expressed on the floor of the House, is important here

Mr. Hull: . . . the widow or next of kin of an officer who dies from wounds received in battle or disease contracted in active service gets six months' pay of his rank, and the widow or next of kin of a private soldier will get six months' pay of his rank. It is a new proposition.

It will cost the Government probably money in time of war. In time of peace it will cost very little because the man has to die in active service as a result of the service either from wounds or disease. . .

Mr. Dawson: Will that in any way change the pensionable status of that widow?

Mr. Hull: Not a bit; not a bit.

Mr. Kahn: That simply carries it for the Army practically what is done now in the case of a United States minister or consul abroad, or Member of the House.

Mr. Hull: Yes. We now give to the widow of every Member of Congress who dies a year's salary; I think I am not wrong in that, and to every employee of the House six months' pay.

Mr. Kahn: That is very true.

Mr. Hull: It simply extends to the Army, and will to the Navy and Marine Corps, this recognition, that when a man is called away and his family may be left dependent and need something at once, to care for them.²

(The Navy and Marine Corps were covered by similar -- but, as usual, not identical -- language two days later.)³

The Army appropriations act, the following year, introduced the further qualification that the gratuity would be paid whenever the death was "not the result of his own misconduct" instead of when death was "contracted in the line of duty."⁴

(It took the Navy three years to get in lock-step)⁵

Just a month before the Great War erupted in Europe, the Army doubled the size of the death gratuity - but only for aviation deaths.

the widow of any (Army) officer or enlisted man who shall die as a result of an aviation accident, not the result of his own misconduct, (shall receive) an amount equal to one year's pay . . .⁶

This time, when the Navy copied, a year later, it added curious language about "wounds or disease, the result of an aviation accident," and doubled the pension.

In the event of the death of an officer or an enlisted man of the Navy or Marine Corps from wounds or disease, not the result of his misconduct, received while engaged in actual flying in or in handling aircraft, the gratuity to be paid (in lieu of the amount specified originally) shall be an amount equal to one year's pay . . .

. . . In all cases where (a man) dies . . . or is disabled by reason of any injury received or disease contracted in line of duty, . . . flying in or in handling aircraft, the amount of pension allowed shall be double that authorized (in non-aviation) . . .⁷

The basic death gratuity entitlement for almost forty years has been PL 66-99 of December 17, 1919.

upon . . . notification of the death from wounds or disease, not the result of his own misconduct, . . . on the active list of the Regular Army . . . paid to the widow . . . an amount equal to six months' pay . . .

At first glance this appears only to be a restatement, eleven years later, of the original legislation. In point of fact, it turns out to be a reinstatement of the death gratuity benefit after it had been repealed (somehow) by the War Risk Insurance Act of October 6, 1917. This Act had amended the original War Risk Insurance act of 1914 whose purpose had been limited to having the Treasury Department guarantee or underwrite insurance on American vessels and cargo (in those years before US entry in WW I when the US was already a major supplier of war materials). The 1917 amendment made life insurance available to military personnel through Treasury Department guarantees and subsidies. Persons could purchase insurance in multiples of \$500 to a maximum of \$10,000 and have their premiums deducted from their military pay. The policy would pay off in monthly payments (as distinct from

lump-sum) in the event of the servicemember's death or disability from injury or disease. All conflicting laws were repealed. In that way the Army and Navy death gratuity provisions of 1908 were repealed - rather than by specific citation. The confusion from such imprecision only came to light in the next two years as servicemen and their survivors made known their distress at being done out of a benefit. The War Department simply got "tired of taking the static," to use a latter day expression, and re-introduced the benefit in the 1919 appropriation act.

Of the several hundreds of pages of testimony on the entire act, a surprisingly disproportionate share, perhaps most of 20 pages were devoted to discussion of the death gratuity. It was patently clear that even the Members of Congress who had amended the War Risk Insurance Act in 1917 had not all understood they were replacing a gratuity with contributory life insurance.

Mr. Rayburn maintained, however, that it had not been repealed inadvertently but rather, on the basis that

this was a democratic Army that we were raising, and that a private in it ought to be paid the same compensation as a major general . . .

That position was challenged by Mr. McKenzie who thought the real purpose of the death gratuity was to enable the widow and children to get home from a distant Army post after the death of her husband.¹⁰

The major portion of the discussion on the House floor had to do with aspects of the bill that made the gratuity retroactive to the time of passage of the War Risk amendment (so as to have the effect of maintaining the gratuity, without break, since its inception in 1908), and the discrimination involved in restricting payments only to dependents of Regular Army and not to those of National Guard and reserve officers killed during the war. The War Department most definitely wanted to restrict such expenditures to Regulars. No one seemed to have any hard figures on numbers of cases or costs to the taxpayer - even for the retroactive provision. Mr. Swope (Kentucky) pointed out that ratios he had seen indicated that for every one family of a deceased Regular Army soldier to receive the gratuity "three families of National Guard, drafted, or reserve deceased soldiers would receive nothing." ¹¹

A Senate amendment tried to offset any other death benefit payments against those in this retroactive reinstatement of the death gratuity but that was defeated.

The following selected excerpts from the Congressional hearings of September - December 1919 are important background to understanding the earlier purpose of the death gratuity as well as to current consideration of its modification, continuation, or possible elimination.

Mr. Wadsworth

. . . It is to restore the provision of the law affecting the Regular Army up to the time of the enactment of the war-risk insurance law. Through an obvious error, the war-risk insurance act, by implication at least, repealed the provision of the law which had been upon the statute books for many years under which the nearest of kin . . . received six months' pay in the nature of an insurance payment to tide over the emergency caused by the death of the head of the family
(Emphasis added)

Mr. Smoot

. . . the object of the bill is simply to authorize the Government to pay six months' pay immediately, so that the beneficiaries may have the use of the money at once. . .
(Emphasis added) 12

Mr. Blanton

I would like to ask the gentleman a question. In passing the Black amendment to the war-risk insurance act, which passed in the House by an overwhelming vote, the House thereby announced its policy that it recognized when a man gave his life to his country, whether on the battle field or not, whether he was a private or an officer, he gave everything on earth of value that he had; that in giving his life, the private gave as much as the officer, and that his wife should be remunerated in the same amount. If that is the announced policy of this House and of this Congress, because the Senate approved of that provision, why should we announce a policy in one piece of legislation that an officer's widow and children should not receive any more than the widow and children of a private, based on the death of the husband, and then in this proposed legislation announce a new and different policy that an officer's widow should receive in some cases twenty times more for the death of her husband than the widow of a private did for the death of hers?¹³

Mr. Anthony

For the same reason that an officer receives more salary than the private. The gentleman would not propose to level all salaries.

Mr. Blanton

But salaries are for services rendered in the lifetime. When a man gives his life to the service of his country and the flag of his country, he is giving everything he possesses, and the private gives just as much as the officer. Death is a leveler of all persons and of all positions.

R

Mr. Anthony

According to the gentleman's argument, he would give the wife of a Member of Congress who died no more than he would give the wife of a Doorkeeper of the House.

Mr. Blanton

I know that Congress pays the widow of a Congressman \$7,500, but I am not in favor of it; I am against that policy. But even under that pernicious custom, Congress does not pay the widow of the most prominent member of the great Ways and Means Committee one single cent more than the widow of the obscurest member. But we have already announced the policy that we would not give the widow and children of an officer more than the widow and children of a private . . .¹⁴

Mr. Mann of Illinois

No one, however, during my experience has ever undertaken to take away from the Army or the Navy anything to their advantage which they were receiving. The war-risk insurance act covered the officers and men of the Regular Army. Before that act was passed it was the law that when an Army officer died his family received a gratuity of six months' pay. We do the same thing with an employee of the House. Where an employee dies the Committee on Accounts brings in a resolution giving to the family of the deceased a sum equal to six months of his pay. There are many reasons why such practice is legitimate, and probably it is wise to have that sort of thing the permanent policy of the Government. Most of the Army officers are not disposed to save a

great deal. The Army officer knows that as long as he is in the service he receives his pay, and if he reaches the age of retirement his pay continues and if he dies, well there you take the chance. The Government, therefore, has provided in the past that it will pay to the widow or children of the deceased Army officer a sum equal to six months of his pay, so that they will have some cash in hand at least.

Now, the war-risk insurance act was intended to take the place of all other gratuities paid by the Government to Army officers in the Regular Establishment or in the Volunteer Establishment and all enlisted men both in the Army and in the Navy. Here was a new principle that came up. Instead of giving gratuities in other ways, as pensions according to the law theretofore, there was a new provision provided of giving gratuities by the Government in the way of compensation or whatever you may call it. Army officers were given the benefit of this, both in the regular Establishment and in the National Army itself, both officers and enlisted men, and they went through the war without making a single objection, as far as I have been able to learn, that they were not well cared for under the war-risk act. But after the war is over the families of those who had died received the benefit of the war-risk insurance act, both officers and men, and after they have received the benefit which Congress concluded the Government should give them some bright officer remembers that they used to get a gratuity of six months' pay. Therefore this bill is sent by the War Department to Congress suggesting that that six months' pay or gratuity be restored, it having been repealed by accident, or incident, or ignorance, or whatever it was.

It is just the case of where if a man has enjoyed a particular thing and you give him something which is better, he wants both. These Army officers have enjoyed the benefit of the war-risk insurance act and now want the benefit of the old custom of the Government giving their families a gratuity. There is no reason in the world why so far as the war deaths are concerned there should be any distinction between the Regular Army and the National Army, or whatever it is called. (Applause) And there is no reason for giving any of them this gratuity now, because they are taken care of by the war-risk insurance act. (Applause) And if Congress should undertake to give them all a bonus of some kind they all ought to get the benefit of it on equal terms. (Applause) Now, the first two sections of this bill, drafted by the War Department, were sent to Congress to be enacted into law. The Senate could not see the justice of giving these officers who have died in the service the benefit of the war-risk insurance act, and then, in addition, an entire gratuity, and inserted an amendment in the bill, which is section 3 of the bill providing that if the war-risk insurance was paid at least the six months' gratuity to be paid should be deducted from that. Well, as to the past, nobody could object to that. As to the future, it may be that it would not work very well. The Army says it draws a distinction between those who take insurance and those who do not and it is a penalty on those who do take insurance. Now, the committee recommends striking out the provision inserted by the Senate to deduct the amount of the six months' gratuity from the war-risk compensation paid, and then provides in addition that we go back to October 6, 1917 . . .

. . . if this committee will just disagree to that amendment . . .

it will restore the law to what it was before the war, with the one exception that the officer in the Regular Establishment hereafter may take insurance under the war-risk insurance act, and if he does he receives compensation in that way and also will get the benefit of six months' gratuity. (Emphasis added)¹⁵

Mr. Swope

. . . Now, gentlemen, I want to call your attention to this one fact about the professional soldier: When a man goes into the Regular Army as a profession, he necessarily undertakes all the hardships and hazards of that profession, the same as he would in any other profession, and for that reason he is not entitled to any more than a man in the reserve, drafted Army, or National Guard while on active duty. The men who made the greatest sacrifices were the men who left homes, business, and education and gave up all for the great cause. There were many volunteers who went into the Regular Army at the beginning of the war and others went into the National Guard . . .

Mr. Anthony

Oh, let me say that the gentleman from Massachusetts is making the same mistake that has been made many times today on the floor of this House by endeavoring to confound this legislation primarily enacted for the regular service with the service rendered by temporary officers and men enlisted for the period of the war. I do not want for a minute to refuse to give everything that is due to the men who went into the temporary service. I think they should have everything that we can do for them, but this is intended for the regular service, which is of an entirely different nature from the service rendered by the other men, and we should consider it purely in that light.¹⁷

Mr. Walsh

The gentleman is advancing as an argument that some officers of the Regular Army failed to take out insurance and therefore their dependents should have six months' gratuity.

Mr. Anthony

We are penalizing the families because of the failure of the husband to take out insurance.

Mr. Walsh

How are you going to take care of the families of the volunteer officers who failed to take out insurance?

Mr. Anthony

They are not considered on the same basis as the officers of the Regular Army for the reason that they have not given 15 or 20 years of their life to the Government.

Mr. Walsh

They have given their lives in the defense of their country.

Mr. Anthony

I am not minimizing that.

Mr. LaGuardia

. . . The question is whether the families of these officers shall have the six months' allowance, as the law formerly provided. The officer knew that if he died in the service his family would receive six months' pay and allowance. The real reason is, as everyone knows, that the Regular Army officer lives with his family at the post or the barracks or anywhere where his military duties call him, and that when he dies the family is compelled to move out of the house and find a home elsewhere. So that the families of these officers who died after October 6, 1917, have absolutely no home. They are destitute, and this talk that they have the benefit of the war-risk insurance is misleading, because all that the widow receives is \$57 a month if the officer carried the full \$10,000 insurance. So it is not a question of giving the officer's family more consideration than another set of officers, but it is carrying out a quasi contractual obligation on the part of the Government with the families of these officers that they would receive six months' allowance in case of death, and that is all there is to it.

If we do not allow sufficient compensation to the injured and crippled officers not in the regular status, that is our own fault. We can pass any measure we desire in regard to that, and this discussion that we have had in regard to the volunteers has no part in deciding the merits of this bill. All we have before us is the question, Are we going to keep faith with the families of these officers who expected the six months' allowance and who did not know it was repealed? If the Congress did not know it, how could you expect the officers or their families to know that it was repealed? In all fairness and justice let us be manly about this and help those families by granting this compensation . . .
(Emphasis added) 18

The Law which resulted (as stated on page 5) from this testimony, reinstated the death gratuity of six months' pay for Regular Army personnel effective upon passage of the Act. It was not made retroactive, nor was it offset against the proceeds of insurance coverage or extended to non-Regular personnel.

In 1920, six months after the Army, the Navy obtained reinstatement of its 1912 death gratuity authority.¹⁹ It, too, made clear that the provisions applied only to the Regular Navy and Regular Marine Corps. The statute also specified that each service member without a wife or child had to designate the "proper dependent relative" to receive the payment. In addition, nurses on the active list were covered by the benefit.

The same statute extended death gratuity provisions to the Coast Guard.²⁰ (Before that time, the predecessor organizations to the Coast Guard had the authorization to continue to pay, for two years after his death, the amount the husband "would be entitled to receive as pay if he were alive and continued in the service. . . ." ²¹

A 1923 amendment stipulated that none of the funds used for payment of the six months' pay would be conveyed "to any unmarried child over twenty-one years of age . . . who is not actually a dependent" ²²

In the following year, an amendment to the World War Veterans Act of 1924, would seem to have amended the death gratuity legislation by requiring that

. . . no compensation or income shall be payable for death inflicted as a lawful punishment for a crime or military offense, except where inflicted by the enemy . . . 23

The 1919 statute was next amended in 1928 for the Army to catch up to the Navy by granting gratuity to the beneficiaries of

nurses of the regular Army to the same extent and under the same condition as to officers and enlisted men of the Regular Army²⁴

A 1929 statute reaffirmed the applicability of the death benefit only to survivors of Regular Navy, Marine Corps, and Coast Guard, but extended recipient eligibility to grandparents, parents, sister, or brother if it could be shown they were actually dependent. 25

A 1930 act authorized the gratuity payment to designated beneficiaries of members of the Fleet Naval Reserve and Fleet Marine Corps Reserve "who die while on active duty and not as a result of their own misconduct."²⁶

A new military category of "aviation cadet" was established in 1935 and some special benefits were authorized to attract youngsters including \$10,000 of free Government life insurance.²⁷

A 1936 act dealing specifically with care and treatment of reservists did not mention the death gratuity, specifically, although it did authorize burial expenses.²⁸

It was during the deliberations leading up to the National Defense Act of 1939 that the subject of reserve coverage really came to the fore.

. . . all officers, warrant officers, and enlisted men of the Army of the United States, other than the . . . Regular Army, if called or ordered into the active military service in excess of thirty days, and who suffer disability or death in line of duty from disease or injury. . . shall be . . . deemed to have been in the active military service . . . receive the same pensions, compensation, retirement pay, and hospital benefits . . . as Regular Army . . .
(Emphasis added)²⁹

The heated discussions, over a period of three weeks, pitted the forces in support of the reserves against those who supported the War Department view (largely based on increased cost exposure) of restricting the full array of benefits to regulars. In the end, the pro-reserve forces prevailed. What follows is some pertinent excerpts characterizing the differing points of view:

Mr. Faddis: A Reserve officer called to active duty in the Air Corps, or anywhere else, who is killed in the proper performance of that duty is just as dead as a Regular officer killed under the same circumstances. If he leaves a family, most likely he leaves the family under similar circumstances as that of a Regular Army officer of like grade and like length of service. Whatever may be the condition of his family, they are entitled to the protection of this Government just the same as is the family of a Regular officer.

Anyone in the Reserve Corps who comes out to serve his country, although it may be in a training period, does so very often at a sacrifice of his time and money. He furnishes the most unselfish service to his country of any man who serves the Nation. In his own time and at his own expense he goes through a period of training that is most valuable to this Nation, and by the unselfish service rendered to the Nation by such individuals it does away with the necessity of maintaining in this Nation an army such as we find maintained in foreign countries at tremendous expense. Largely because of the service of the Reserve officers,

we are able to maintain a system of national defense with only a small standing Army. The Officers' Reserve Corps is the framework upon which we can build the Army we must raise in case of necessity. Therefore, if we are going to have an esprit de corps in the Officers' Reserve Corps, if we are going to have them give unselfishly in the future as they have in the past, we certainly should give them the same protection, if they are injured in the proper performance of their duty, as we extend to the Regular officers in connection with this service.

Mr. May: Does the gentleman think it is fair to afford the same rights and privileges to a man who has been in the service for a day or two only and happens to get hurt as against a man who has been in the service for 10 years and has served for all these years?

Mr. Faddis: I say that although this man may have been in the service only a few days he has come there to render to his Government just as much service as he is capable of rendering, and his life is just as valuable to him as the life of a man who has been educated at West Point is to him. His life is just as valuable to him, because he has paid for his own education, as if the Government had paid for it, and he is entitled to the full benefit of all the protection this Government can give him. (Emphasis added) ³⁰

Mr. Case of South Dakota.

Why should you discriminate between the Reserve officer and the Regular officer who might happen to be injured or killed in the same ship or under the same circumstances?

Mr. Thomason:

I do not draw that line. That is not the issue involved here. I believe the record will show that the Reserve officers do not have a better friend than I.

Mrs. Rogers of Massachusetts:

Mr. Chairman, will the gentleman yield?

Mr. Thomason:

I yield to the gentlewoman from Massachusetts.

Mrs. Rogers of Massachusetts.

Does not the gentleman believe the Reserve officers should be given added protection? The Regular Army officers are in training every day, all their lives, while the Reserve officers do not have that opportunity of training to protect themselves.³¹

Mr. Edmiston:

I will explain the 30-day provision. That was to take out the Reserve officer who is called into the service for a 2 weeks' training period. This does not apply to him, but when they call upon him for extended duty of 30 days or longer, he goes in on the same basis as a Regular Army officer. (Emphasis added)³²

Mr. McCormack:

Mr. Chairman, I rise in opposition to the pro forma amendment.

Mr. Chairman, I think those who favor this legislation, who have been fighting for it for years, now that we have it in this bill, ought to keep it in the bill. (Applause.)

Mr. Clark of Missouri:

Let me ask the Senator from Alabama if it is not a fact that there is no substantial dispute between the House and the Senate as to this provision? The only dispute is between the House and the Senate, on the one hand, and the War Department, on the other, which is opposed to the whole proposition? The War Department opposed to it exactly in the same way that it was opposed to putting emergency officers who were permanently disabled during the World War on the same footing with Regular Army officers. It is the same old controversy; the War Department always opposes any proposal to put on the same footing with enlisted men and officers of the Regular Army men who are not in the Regular Establishment, but who may make the same sacrifices, suffer the same disabilities, and be under the same economic disadvantages.

While I am on my feet, I express the opinion that if there were written into the bill a provision making the appropriation payable through the Veterans' Administration instead of being carried in the War Department appropriation bill the War Department would withdraw its objection. (Emphasis added) 33

When the National Defense Act was finally passed in April, 1939, it contained the thirty-day active duty threshold for reservists to be eligible for the full range of Regular benefits.

The Naval Aviation Personnel Act of 1940 appeared to extend the death gratuity benefits to Navy and Marine reservists with this language.

All (members) of the Naval or Marine Reserve who, if called or ordered into . . . service in excess of thirty days, suffer disability or death in line of duty from disease or injury. . . . (are) entitled to receive the same pension, compensation, retirement pay, and hospital benefits as (persons) of the Regular Navy or Marine Corps . . . (Emphasis added)³⁴

It was not until three days after Pearl Harbor that the Congress finally extended the death gratuity to dependents of all Army men who died in line of duty while in active service - and not just to the dependents of Regulars.³⁵

During World War II, several refinements were added. The Pay Readjustment Act of 1942 made it possible for military retirees called back to active duty to be eligible for the death gratuity.³⁶

A minor modification, in 1943, provided for payment of the death gratuity to a secondary beneficiary if the first died before receiving payment.³⁷

An amendment to the 1920 basic legislation on Navy/Marine Corps death gratuity expanded the list of eligible beneficiaries

Widow . . . child . . . to any other dependent relative, any grandchild, parent, brother or sister, or grandparent shown to have been dependent . . . an amount equal to six months' pay . . . of persons of the Regular Navy and Marine Corps . . . and Coast Guard

and required those without wife or child

to designate the proper dependent relative to whom (the death gratuity) shall be paid . . .

in the event of the death of any beneficiary before payment to and collection by such beneficiary . . . such amount shall be paid to the next living beneficiary in the order of succession above stated⁵⁶

From the standpoint of the reserves of the Navy and Marine Corps, the most significant amendment was PL 81-108 devolving from Margaret Chase Smith's Senate Bill 213 which was designed to provide benefits for members of the reserve components who suffered disability or death from injuries incurred while engaged in active duty training for periods of less than thirty days or while engaged in inactive duty training.

(1) if called or ordered into active naval or military service . . . in excess of thirty days, suffer disability or death in line of duty from disease while so employed or

(2) if called or ordered . . . to active naval or military service or to perform active duty for training or inactive duty training for any period of time, suffer disability or death in line of duty from injury while so employed;

shall be deemed to have been in the active naval service during such period, and they or their beneficiaries shall be in all respects entitled to receive the same pensions, compensation, death gratuity, retirement pay, hospital benefits, and pay and allowances . . . of the Regular Navy or Marine Corps . . . (Emphasis added)³⁹

Among other benefits for those reservists, it granted their beneficiaries the death gratuity where death resulted from injury. The act was made retroactive to the end of the war (14 Aug 45) and thereby, among other benefits, made the death gratuity payment available to the dependents of 35 Army, 135 Air Force, 113 Navy and Marine Corps reservists who had been killed on periods of less than 30 days of active duty between that time and passage of the act on 20 June 1949.

The same year, the complete revision of the Coast Guard statutes (title 14) set forth this wording:

the provisions of law relating to the payment of an additional amount of pay to the widow, children or other dependent relative of an officer or enlisted person of the Regular Navy or Marine Corps upon official notification of the death of such officer or enlisted man shall apply in the same manner, to the same extent, and under the same conditions to officers and enlisted men of the Regular Coast Guard. The authority and duty vested in the Secretary of the Navy by such provisions of law shall be exercised by the Secretary of the Treasury in the application and administration of such laws to the Coast Guard when it is in the Treasury Department.⁴⁰

Those "temporary members" of the Coast Guard Reserve (i.e., those civilian owners or crew members of motorboats and yachts placed at the disposal of the Coast Guard in time of national emergency) were covered by attributing to those unpaid volunteers a monthly pay rate of \$150.⁴¹ That figure was raised to \$300 in⁴² 1956 and to \$600 in 1974.⁴³

The Korean War had been underway for almost ten months by the time Congress took action on the matter of insurance protection for reservists and guardsmen killed during the war. When action was taken it did make retroactive in the Servicemen's Indemnity Act of 1951 that

. . . provided that on and after June 27, 1950, any person in the active service . . . or the reserve components thereof, including the National Guard when called or ordered to active duty or active training for fourteen days or more . . . shall be automatically insured by the United States without cost to such person, against death in such service . . . for \$10,000 . . .

. . . any person called to extended active service for a period exceeding thirty days shall continue to be so protected for a period of one hundred and twenty days after separation or release . . .

. . . persons in the Reserve components, including the National Guard, while engaged in aerial flights in Government owned or leased aircraft for any period, with or without pay as incident to their military or naval training, shall be deemed to be in the active service for the purposes of this Act . . .⁴⁴

In August 1956, the Servicemen's and Veterans' Survivor Benefits Act was passed that set forth the death gratuity entitlement substantially as it is today (1977). Eligibility was extended to (dependents of) Guardsmen and reservists whose deaths resulted on or from active duty for training for 30 days or less, or while they were on inactive duty training. The gratuity also applied to death from disease incurred on active duty training of less than 30 days. (Such coverage had been limited to injury.) Furthermore, beginning 1 January 1957 the Act would extend new coverage for death resulting from injury of the reservists or Guardsman while traveling directly to or from training or drills.^{44a}

Because of its importance, the complete section relating to death gratuity (two pages of the 30 page act) is excerpted for inclusion in this paper.

Excerpt from the Servicemen's and Veterans' Survivor Benefits Act of August 1, 1956 (PL 84-881):

TITLE III—DEATH GRATUITY

DEATHS ENTITLING SURVIVORS TO DEATH GRATUITY

SEC. 301. (a) Except as provided in section 304 (a), the Secretary concerned shall have a death gratuity paid immediately upon official notification of the death of a member of a uniformed service under his jurisdiction who dies while on active duty, active duty for training, or inactive duty training.

(b) The death gratuity shall equal six months' basic pay (plus special and incentive pays) at the rate to which the deceased member of a uniformed service was entitled on the date of his death, but shall not be less than \$800 nor more than \$3,000.

(c) The death gratuity shall be paid to or for the living survivor or survivors of the deceased member of a uniformed service first listed below:

- (1) His spouse.
- (2) His children (without regard to their age or marital status) in equal shares.
- (3) His parents or his brothers or sisters (including those of the half blood and those through adoption), when designated by him.
- (4) His parents in equal shares.
- (5) His brothers and sisters (including those of the half blood and those through adoption) in equal shares.

(d) If a survivor dies before he receives the amount to which he is entitled under this title, such amount shall be paid to the then living survivor or survivors first listed under subsection (c).

IMMEDIATE PAYMENT OF DEATH GRATUITY

SEC. 302. In order that payments under section 301 may be made immediately, the Secretary concerned (1) shall authorize the commanding officers of military or naval commands, installations, or districts, in which survivors of deceased members of the Army, Navy, Air Force, Marine Corps, or Coast Guard are residing, to determine the survivors eligible to receive the death gratuity, and (2) shall authorize the disbursing or certifying officer of each such command, installation, or district to make the payments to the survivors so determined, or certify the payments due to such survivors, as may be appropriate.

DEATH GRATUITY COVERAGE AFTER ACTIVE SERVICE

SEC. 303 (a) The Secretary concerned shall have a death gratuity paid in any case where a member or former member of a uniformed service dies on or after January 1, 1957, during the one hundred and twenty-day period which begins on the day following the date of his discharge or release from active duty, active duty for training, or inactive duty training, if the Administrator determines that the death resulted—

- (1) from disease or injury incurred or aggravated while on such active duty or active duty for training; or
- (2) from injury incurred or aggravated while on such inactive duty training. 45

(b) Whenever the Administrator determines, on the basis of a claim for benefits filed with him under title II of this Act, that a death occurred under the circumstances referred to in subsection (a), he shall certify that fact to the Secretary concerned; in all other cases, he shall make the determination referred to in that subsection at the request of the Secretary concerned.

(c) The standards, criteria, and procedures for determining incurrence or aggravation of a disease or injury under this section shall (except for line of duty) be those applicable under disability compensation laws administered by the Veterans' Administration.

(d) For purposes of computing the amount of the death gratuity to be paid by reason of this section, the deceased person shall be deemed to be entitled on the date of his death to basic pay (plus special and incentive pays) at the rate to which he was entitled on the last day he performed such active duty, active duty for training, or inactive duty training.

(e) No amounts shall be paid by reason of this section unless the Administrator determines that the deceased person was discharged or released under conditions other than dishonorable from such period of active duty, active duty for training, or inactive duty training.

ADMINISTRATIVE PROVISIONS

SEC. 304. (a) No payment shall be made under this title if the deceased member of a uniformed service suffered death as a result of lawful punishment for crime or for a military or naval offense, except when death was so inflicted by any hostile force with which the Armed Forces of the United States have engaged in armed conflict.

(b) Payments under this title shall be made from appropriations available for the pay of members of the uniformed service concerned.

(c) A member of a reserve component of a uniformed service who performs active duty, active duty for training, or inactive duty training, without pay, shall, for the purposes of this title only, be considered as having been entitled to basic pay while performing such duties. In the case of a member of a reserve component of a uniformed service who suffers disability while on active duty, active duty for training, or inactive duty training, and is placed in a pay status while he is receiving hospitalization or medical care (including out-patient care) for such disability, he shall be deemed, for the purposes of this title, to continue on active duty, active duty for training, or inactive duty training, as the case may be, for so long as he remains in a pay status.

(d) For purposes of this title, a man or woman shall be considered to be the spouse of a member of a uniformed service if legally married to the member of a uniformed service at the time of the member's death.⁴⁶

That act, significantly, picked up the 120 day provision for extended coverage after separation that had been introduced for life insurance coverage in the Servicemen's Indemnity Act of 1951. Such post-service entitlements were to be determined by the Veterans Administration, but paid by DoD.

As to the amount of the gratuity, the change was significant too. Although the language maintained the phrase "six months' pay" it was qualified as to be "not less than \$800 nor more than \$3,000." A day before enactment, a death would have resulted in a gratuity ranging from \$468 to \$8,648 based on pay rates then in effect.⁴⁷ Military disbursing officers were authorized to make immediate payments so as to continue the original intent of the gratuity of placing funds readily at hand.

The provisions of the Survivors Benefits Act were picked up in two statutes in 1958 - periodic overhauls of the United States Code. Public Law 85-861⁴⁸ revised titles 10, 14, and 32, while Public Law 85-857 consolidated veterans matters in title 38.⁴⁹

In the codification, the expression "six months' pay" was substituted for "six months' basic pay (plus special and incentive pays)." This was not a change in entitlement or reversion to

earlier wording but a rather, a simplification deriving from the point that "pay" as defined in title 10, section 101, reads as follows:

(27) "Pay" includes basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but does not include allowances. 50

Under existing law (in 1964) individuals had coverage, for purposes of death benefits, for diseases contracted or injuries sustained while proceeding to or returning from extended active duty, regardless of when that duty was performed. However, with respect to active duty for training or inactive duty training, individuals were covered only for injuries sustained while proceeding to or returning from such training duty if the injury occurred on or after 1 January 1957. The Veterans Administration sought to remove that date restriction in a draft bill transmitted with a memo of 12 May 1964 that said in part

. . . we believe that all reservists who may have been injured while proceeding to or returning from such duty should be given the benefit the portal-to-portal provision . . . 51

The statute eliminated the cut-off date.⁵²

The following year, as the Vietnam War was building up, the Congress provided for automatic life insurance coverage of \$10,000 or \$5,000 unless the serviceman took action to opt out. Section Three of the Act provided for a death gratuity of \$5,000 for a death from combat. That sum was to be reduced, however, by any DIC, NSLI, or USGLI amounts payable. (This was in addition to and not in lieu of the basic death gratuity entitlement described in this paper.)⁵³

Then, in 1970, PL 91-291 was passed to

automatically insure any member
of the uniformed service on ac-
tive duty, active duty for train-
ing, or inactive duty training
scheduled in advance by competent
authority, against death in the
amount of \$15,000 . . . ⁵⁴

Next, the Veterans Insurance Act of 1974 increased the maxi-
mum SGLI coverage to \$20,000 but stipulated that

no person may carry a combined
amount of SGLI and VGLI in ex-
cess of \$20,000 at any one time
. . . ⁵⁵

Mention of this insurance coverage is important, I believe,
because it is a significant element of the military estate

benefits available to reservists. The death gratuity entitlement, you will recall, was originally instituted in 1908 because life insurance hadn't been obtainable without a war exclusion clause. When the war-risk insurance coverage was introduced by the Congress during the first World War, the death gratuity was scrapped. The subsequent hue and cry brought about reinstatement of the death gratuity in 1919 without eliminating the life insurance coverage. Since that time the two benefits have existed in parallel: life insurance coverage has quadrupled and the death gratuity maximum has been reduced and held to a statutory maximum of \$3,000.

Life insurance as a concept is now universally understood. The amount of military coverage has increased rapidly because of the need for the military to be competitive in its total compensation and benefit package.

The death gratuity concept, on the other hand, is an archaic one whose function would appear largely to have been taken over by life insurance. (Although no data are available, it is quite likely that most officers, and probably senior NCO's supplement their military group life insurance with individual policies just as their contemporaries do in civilian life.) To the best of our knowledge, no major US corporations currently provide a cash death gratuity.

Certainly, the original intent of providing immediate funds to allow the family of the deceased to vacate government quarters at a distant post and make its way back home is no longer valid for the Regular establishment and even less so for the Reserves. The lump sum payment was helpful in the past when life insurance payments were only available in monthly installments over a ten year period. The lump sum gratuity is also tax free.

the amounts paid gratuitously to the beneficiaries of . . . member(s) of the Armed Forces . . . represent a gift by the United States and are, therefore, excludable from the gross income of such beneficiaries under the provisions of section 22(b)(3) of the Internal Revenue Code of 1939.⁵⁶

Furthermore, the absurdity of the "six months' pay . . . not . . . less than \$800 or more than \$3,000" comes into focus with the recognition that those who drafted the benefit in 1908 had deliberately sought to provide a differential by rank, ranging from \$90 to \$4,000 a factor of 44. Without the statutory limitation, the dependents of an E-1 could now draw about \$2,400 and those of an O-10 about \$24,000, only a factor of 10. Now, with the statutory limitation the difference by rank is miniscule and will likely disappear with the next pay raise. Such a flat or uniform payment is precisely what is paid through the medium of life

insurance. In fact, currently, any regular, or any active reservist, paying a very modest annual premium, (thanks to group rates and Government subsidy), can protect his family to the level of \$20,000.

Therefore, it appears the only useful purpose surviving the original intent relates to providing an immediate cash payment⁵⁷ to survivors: is this still necessary?

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- 3 35 Stat 128 (1908); PL 60-115
- 4 35 Stat 735 (1909); PL 60-305
- 5 37 Stat 329 (1912); PL 62-290
- 6 38 Stat 516 (1914); PL 63-143
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- 8 41 Stat 367 (1919); PL 66-99
- 9 Congressional Record, Dec 3, 1919, Vol 59, Part 1, p 78
- 10 Ibid
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- 12 Congressional Record, Sep 22, 1919, Vol 58, Part 6, p 5693
- 13 Congressional Record, Dec 3, 1919, Vol 59, Part 1, p 79
- 14 Ibid
- 15 Ibid p 82
- 16 Ibid p 83
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- 18 Ibid
- 19 41 Stat 824 (1920); PL 66-243
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- 24 45 Stat 249 (1928); PL 70-111
- 25 45 Stat 710 (1928); PL 70-473

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- 34 54 Stat 864 (1940); PL 76-775
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- 37 57 Stat 599 (1943); PL 78-198
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- 41 Ibid p 553
- 42 70 Stat 981 (1956); PL 84-955
- 43 88 Stat 141 (1974); PL 93-283
- 44 65 Stat 34 (1951); PL 82-23
- 44a Senate Report No. 2380, June 27, 1956 to accompany HR 7089
that became PL 84-881 1956 Congressional News, p 3983
- 45 70 Stat 868 (1956); PL 84-881
- 46 Ibid, p 869
- 47 1956 Congressional News, p 3979
- 48 72 Stat 1544 (1958); PL 85-861
- 49 72 Stat 1122. (1958); PL 85-857
- 50 Title 10 USC, Section 101 (27) (1958)

- 51 1964 Congressional News, p 3781
- 52 78 Stat 994 (1964); PL 88-616
- 53 79 Stat 880 (1965); PL 89-214
- 54 84 Stat 326 (1970); PL 91-291
- 55 88 Stat 169 (1974); PL 93-289
- 56 Revenue Rule 55-330, Regulation 118, Section 39.27(b)(3),
Internal Revenue Bulletin, CB 1955-1, Jan-Jun55
- 57 AFM 177-105, Chapter 7, p 1, 17 Jan 77, requires that
disbursing officers, "Make payment within 24 hours when
the eligible beneficiary can be determined and there is
no doubt as to propriety of payment."

27 October 1977

BURIAL EXPENSES AS A BENEFIT FOR RESERVISTS

Legislative Authority: 10 USC 1481 to 1488
24 USC 281, 271-276
38 USC 901 to 908 and 1000 to 1004

Purpose: To provide an understanding of the Congressional intent as manifest in the legislative history of this benefit.

Background: As with other benefits, it is helpful to seek out the genesis of its introduction for active duty forces and then to get an understanding of when, how, and why it was extended to reservists. This description is two sections covering:

Burial Expenses, and the
Burial Flag.

Burial Expenses

There appears to have been no earlier references to burials in the statutes than those brought about by the slaughter in the War Between the States. In fact, the first authorization was

That the President of the United States shall have power, whenever in his opinion it shall be expedient, to purchase cemetery grounds, and cause them to be securely enclosed, to be used as a national

cemetery for the soldiers who shall die in the service of the country. (Emphasis added)¹

An act in 1867 established the National Cemeteries and directed that the Secretary of War enclose them with

a good and substantial stone or iron fence; and to cause each grave to be marked with a small headstone, or block, with the number of the grave inscribed thereon, corresponding with the number opposite to the name of the party, in a register of burial to be kept in each cemetery. (Emphasis added)²

That was followed five years later, in 1872, with a whole flurry of related acts.

Superintendents were appointed

Superintendents of national cemeteries were to be selected from "meritorious and trustworthy soldiers, either commissioned officers or enlisted men of the volunteer or regular army . . . honorable . . . discharged . . . and who may have been disabled.

. . . compensation from sixty dollars to seventy five dollars per month, according to the importance of the cemeteries . . . also be furnished with quarters and fuel . . .³

Destitute veterans were provided for

That from and after the passage of this act all soldiers and sailors honorably discharged from the service of the United States who may die in a destitute condition, shall be allowed burial in the national cemeteries of the United States.⁴

Action was taken to show that persons were buried -- not numbers. Headstones were to be inscribed "with the name of the soldier and the name of the State . . . when known, . . . in addition to the number."⁵

Work on burying the Civil War dead was continued through an appropriation whose wording had some charm

headstones . . . shall be of durable stone, and of such design and weight as shall keep them in place when set . . . (the) contract . . . shall be awarded . . . (to) . . . combine the elements of durability, decency, and cheapness; and the sum of one million dollars is hereby ap-⁶ propriated for said purpose . . .

Reserves were first mentioned, at least as volunteer forces, in an 1873 statute.

That honorably discharged soldiers sailors or marines who served during the late war either in the regular or volunteer forces, dying subsequent to the passage of this act may be buried in any national cemetery of the United States free of cost and their graves shall receive the same care and attention as the graves of those already buried. The production of the honorable discharge of the deceased shall be authority for the superintendent of the cemetery to permit the interment.⁷

The Secretary of War, who had been given the responsibility for the national cemeteries in 1867, was further charged, in 1876, with including an estimate for their care and maintenance in his annual budget submission.⁸

The next year he was authorized

to erect headstones over the graves of soldiers who served in the Regular or Volunteer Army of the United States during the war for the Union, and who have been buried in private village or city cemeteries (as earlier authorized) for those interred in national military cemeteries.⁹

This was the first mention of the restriction of burial entitlement to "Union" forces although that apparently had been the intent from the start with the 1862 phrase, "die in the service of the country."

The problem of providing for indigent veterans was of such a magnitude that it warranted a separate paragraph in a piece of legislation in 1888 (similar paragraphs continued in annual appropriations acts for many years). Interestingly enough, the wording applied only to those who died in the District of Columbia and were ex-Union soldiers.

Burial of Indigent Soldiers:
For expenses of burying in the
Arlington National Cemetery,
or in cemeteries in the District
of Columbia indigent ex-Union
soldiers who die in the District
of Columbia, one thousand dollars.
Said sum to be disbursed by the
Secretary of War, at a cost not
exceeding fifty dollars for such
burial expenses in each case,
exclusive of cost of grave.¹⁰

Two years later "all (indigent) survivors of the Union Army, Navy, and Marine Corps . . . dying in the District . . . " were to be accepted at Arlington Cemetery.¹¹

Section 4878 of the Revised Statutes was amended, in 1897,

to expand significantly eligibility for burial in national cemeteries.

All soldiers, sailors, or marines dying in the service of the United States, or dying in a destitute condition after having been honorably discharged from the service, or who served during the late war, either in the regular or volunteer forces, may be buried in any national cemetery free of cost. The production of the honorable discharge of a deceased man shall be sufficient authority for the superintendent of any cemetery to permit the interment. Army nurses honorably discharged from their service as such may be buried in any national cemetery; and if a destitute condition, free of cost. The Secretary of War is authorized to issue certificates to those army nurses entitled to such burial.¹²

By 1904 the annual appropriation for the pay of the 75 superintendents of national cemeteries was a princely \$61,000. Some \$3,000 was set aside for the burial of indigents who could now be veterans of the war with Spain so long as they died not just in the District of Columbia but "in the immediate vicinity thereof."¹³

The same legislation showed a drop from \$50 in unit cost authorized to \$45. For the first time, money was appropriated to bring home

remains. Here, the wording used, the conditions described, and the locations listed (as an indication of turn-of-the-century involvement of the US) make this lengthy quote worthwhile.

BRINGING HOME THE REMAINS OF OFFICERS AND SOLDIERS WHO DIE ABROAD: To enable the Secretary of War, in his discretion, to cause to be transported to their homes the remains of officers and soldiers who die at military camps or who are killed in action or who die in the field or hospital, in Alaska and at places outside of the limits of the United States, or who die while on voyage at sea, forty thousand dollars.

BRINGING HOME THE REMAINS OF CIVIL EMPLOYEES OF THE ARMY WHO DIE ABROAD AND SOLDIERS WHO DIE ON TRANSPORTS: To enable the Secretary of War, in his discretion to cause to be transported to their homes the remains of civilian employees of the Army who have died, or may hereafter die, while in the employ of the War Department in Cuba, Porto Rico, Hawaii, China, Alaska and the Philippines, including the remains of any honorably discharged soldiers who are entitled under the terms of their discharge to return transportation on Government transport, and who die while on said transport, five thousand dollars. 14

It wasn't until 1908 that the focus of attention shifted from memorials to past dead to current interment expenses. It was the very same statute that introduced the death gratuity benefit that also spelled out burial expenses. In fact, from the death gratuity of six months' pay was to be withheld a sum to cover burial expenses for men on the active list of the Army.

That hereafter immediately upon notification of the death from wounds or disease contracted in line of duty of an officer or enlisted man on the active list of the Army, the Paymaster-General of the Army shall cause to be paid to the widow of such officer or enlisted man, or to any other person previously designated by him, an amount equal to six months' pay at the rate received by such officer or enlisted man at the date of his death, less seventy-five dollars in the case of an officer and thirty-five dollars in the case of an enlisted man. From the amount thus reserved the Quartermaster's Department shall be reimbursed for expenses of interment, and the residue, if any, of the amount reserved shall be paid subsequently to the designated person. The Secretary of War shall establish regulations requiring each officer and enlisted man to designate the proper person to whom this amount shall be paid in case of

his death, and said amount shall be paid to that person from funds appropriated for the pay of the Army.
(Emphasis added)¹⁵

The separate Navy Appropriation Act, just two days later, had virtually identical language -- except that the same sums were expected only to "defray expenses of interment".¹⁶

In 1912, the Navy language was further modified to meet Army language in the 1909 Act so the eligibility for the death¹⁷ gratuity/burial benefits was broadened for active duty personnel for death "not as the result of his own misconduct" instead of the more limiting "contracted in line of duty".¹⁸

In 1911, burial entitlement in national cemeteries was extended to the members of the Revenue-Cutter Service, one of the predecessor organizations of the Coast Guard.¹⁹

Another Navy Appropriation Act, in 1916, established the Naval Reserve Force and the Marine Corps Reserve and made explicit the comparability of benefits "when actively employed."

All members of the Naval Reserve Force shall when actively employed . . . be entitled to the

same pay, allowances, grat-
uities, and other emoluments
as (those) on active duty . . .
when not actively employed . . . 20
. . . shall not be entitled . . .

The following year, just after the United States entered
the World War, Congress appropriated sizeable funds to meet
one of the costs of warfare.

. . . \$12,150,000 to be known
as the military and naval com-
pensation appropriation, for
the payment of the compensation,
funeral expenses, services, and
supplies . . . 21

If the death occurs before dis-
charge or resignation from service,
the United States shall pay for
burial expenses and the return of
body to his home a sum not to ex-
ceed \$100, ²²as may be fixed by re-
gulations.

Two years after the war, the Congress amended the Section
4878 of the Revised Statutes to provide national cemetery
eligibility for

all who served, or hereafter
shall have served, during any
war in which the United States
has been or may hereafter be

engaged . . . and . . . any
citizen of the United States
who served in the Army or Navy
of any government at war with
Germany or Austria . . . 23

The World War Veterans' Act of 1924 was the first explicit
detailing -- in legislation -- of what was to be encompassed
in the burial expenses to be reimbursed. This detailing,
though, related to expenses to be paid by the Veterans'
Bureau upon the death of veterans -- not active duty per-
sonnel. Of course, among these veterans would be reservists.

If death . . . shall have oc-
curred . . . before discharge
or resignation from the service
the United States shall pay for
burial expenses and the return
of body to his home a sum not
to exceed \$100, as may be fixed
by regulation. Where a veteran
of any war dies after discharge
or resignation from the service
and does not leave sufficient
assets to meet the expenses of
his burial and the transportation
of his body, and such expenses
are not provided for, the United
States Veterans' Bureau shall
pay the following sums: For a
flag to drape the casket, and
after burial to be given to the
next of kin of the deceased, a
sum not exceeding \$5; also for
burial expenses a sum not ex-
ceeding \$100 . . .

. . . necessary cost of transportation . . . within the continental limits . . . including . . . cost of transportation of an attendant (Emphasis added) ²⁴

The American Battle Monuments Commission was established in 1923 to "prepare plans and estimates of suitable memorials . . . in Europe." ²⁵

Two acts in March 1928 appropriated funds to recover bodies of officers, soldiers, and civilian employees. The first related to returning bodies from the World War ²⁶ while the second applied to personnel of the Army "who die while on active duty." ²⁷

The same month, in the War Department Appropriations Act for the year ending 30 June 1929, \$100,000 was allocated for disposition of remains and \$140,000 for

continuing work furnishing headstones . . . for unmarked graves of Union and Confederate soldiers, sailors, and marines . . . of all other wars . . . ²⁸

Here it was, 63 years after the end of the Civil War before the statutes made mention of allowing Federal funds to be used to mark Confederate graves. Southern forces then brought

further pressures on Congress for, and were rewarded with, a special act to authorize the Secretary of War "to erect headstones over the graves of soldiers who served in the Confederate Army."²⁹

Meanwhile, the Secretary of the Navy was authorized to

furnish an escort not to exceed one person to the place of burial for the bodies (of those) who have lost their lives in the naval service.³⁰

A 1928 act expanded the hospitalization and medical coverage of reservists, National Guardsmen, and members of the ROTC (as briefly dealt with in a 1923 act), and prescribed to "pay for burial expenses and the return of the body to his home a sum not to exceed \$100" if the individual were undergoing . . . training or hospital treatment."³¹ (Emphasis added)

As the country struggled with the depression, Congress struggled to control the burgeoning costs of veterans benefits.

(Congress) created a joint Congressional committee to investigate the operation of the laws and regulations relating to the relief of veterans of all wars and persons receiving benefits

on account of service of such veterans and report a national policy with respect to such veterans and their dependents, and shall also report and recommend such economies as will lessen the cost to the United States Government of the Veterans' Administration.³²

(That committee was to report its findings six months later. This researcher found three subsequent Public Laws which postponed the due date for that report -- but never did discover the report itself.)

The Economy Act of 1933 reaffirmed the upper limit of reimbursement for a veteran's funeral as "not to exceed \$107 in any one case", (apparently a figure that included the cost of the flag).³³

In a series of Executive Orders, as part of his economy drive, President Roosevelt cut the figure to \$75 and further dictated that the sum "shall not be payable if a the veteran's net assets . . . equal to exceed \$1,000."³⁴

The President raised the figure to \$100 only six months later but specified that for deaths in a VA facility the transportation of the remains should be limited to the nearest national cemetery, or at least not to exceed the cost to his former residence.³⁵

Indigence, or the inability of the veteran to pay, seemed to underly the intent of earlier legislation and Veterans' Regulations permitting that Bureau to pay burial expenses. This was changed in 1936.³⁶

Notwithstanding the provisions of paragraph II, Veterans' Regulation Numbered 9(a), as amended (USC, 1934 ed., title 38, ch. 12, appendix) burial shall not be denied by reason of the veteran's net assets at the time of death.

An oblique reference to burial eligibility of reserves next came in 1938 with an amendment to 45 Stat 251 (reference 27) and the repeal of 45 Stat 248 (reference 26).

to (appropriate) from time to time such (funds) as may be necessary for funeral expenses . . . for all persons in the Regular Army . . . who die while in the active service.³⁷

The definition of "Regular Army" referred to here was that used in the National Defense Act of 1916 which included the "Regular Army Reserve" in the Regular Army. Nevertheless, the important restriction remained: "while in the active service."

It wasn't until 1940 that the burial benefit was extended beyond active duty -- at least for sailors and Marines. Funds were authorized to be appropriated for funeral expenses to include:

(c) Members of the Naval Reserve or Marine Corps who die while on active or training duty, or while performing authorized travel to or from such duty;³⁸

Two months later Congress extended those same burial benefits to the Coast Guard and Coast Guard Reserve.³⁹

Later that same year, Veterans' Regulations were modified to allow the \$100 burial expense not only for honorably discharged veterans but also for those who "died after discharge for disability incurred in line of duty" and for "those receiving a pension for service connected disability."⁴⁰

The burial allowance for veterans was raised to \$150 in 1946.⁴¹

Even draft registrants were entitled to the same coverage through the Selective Service Act of 1948.⁴²

The burial allowance for veterans was raised to \$250 in 1958,⁴³

and the rate for future draft registrants was pegged to that established for the VA in section 902(a) of title 38 in the Military Selective Service Act of 1971.⁴⁴

The National Cemeteries Act of 1973 authorized a special burial plot allowance of \$150 in addition to \$350 for burial and funeral expenses where the veteran was not buried in a national or Federal cemetery. Additional expenses to \$300 were authorized for the burial of veterans who died of service connected disabilities.⁴⁵

Despite an Executive Order in 1933 to consolidate most national cemeteries under the jurisdiction of the Director of Parks in the Department of the Interior,⁴⁶ a 1938 act authorized the Secretary of War to accept "on behalf of, and without cost to, the United States" land from any state for a national cemetery.⁴⁷ Conversely, in 1947, the Secretary was authorized to convey to any state "any historic military cemetery or burial plot located on military posts . . . which became abandoned or useless for military purposes".⁴⁸

Only two months later, the Secretary was authorized to use excess federal owned lands that were under War Department juris-

diction for expansion of national cemeteries so long as
"No national cemetery as expanded . . . shall have an area
in excess of six hundred and forty acres." 49

The following year, 1948, it came to the attention of the Senate that the national cemeteries were becoming crowded. The Senate looked into the question of eligibility for interment in national cemeteries. They discovered that the original entitlement set forth in 1862 had been simply "soldiers who shall die in the service of the country." That had been modified and expanded from time to time (by Congress), including a 1935 statute to include

Persons who were members of the
Cabinet of the President . . .
. . . any time . . . between
April 6, 1917 and November 11,
1918, may be buried in any national
cemetery: Provided the interment
is without cost to the United
States. 50

To its amazement the Senate investigation found that national cemeteries had been admitting wives and widows of active military since 1890; minor children of eligible persons since 1904; and unmarried adult daughters from 1908. Expansion of eligibi-

lity had been granted by the Secretary of War with the advice of the Army JAG -- and not through statute! The Secretary of War had permitted husbands of wives in the military to be buried in the wife's plot. Without specific legislation such practices had become established custom.

This was a far cry from the legislated entitlement: former members of the military who served during any war (but not in peacetime) and died subsequent to an honorable discharge, and for veterans who were destitute and had no other place of burial.⁵¹

The 1948 Statute resulting from that investigation sought to regularize existing practice by establishing current eligibility.

. . . (a) Any member or former member of the Armed Forces . . . whose last service terminated honorably, by death or otherwise; . . .⁵²

Just two months later the earlier statutes on headstones (going back as far as 1879) were repealed to be replaced by the identical language as above in an authorization for the Secretary of the Army.⁵³

Although all previous statutes on disposition of remains had dealt with the subject in one brief paragraph, the act of 1954 addressed the subject most comprehensively in four pages. Each Service Secretary was authorized to pay for "necessary expenses incurred" for the "recovery, care, and disposition of remains" of military personnel including members of reserve components . . . and . . . Guard

when . . . entitled by law to receive pay from the Federal Government who die while on active duty, active duty for training, or while performing authorized travel to or from such service, or who die while on inactive duty training pursuant to proper authority, or who die while hospitalized or undergoing treatment at Government expense, . . . for injuries illness, or disease contracted or incurred while on such service or inactive duty training or such authorized travel.⁵⁴

Also included were retired members of the services

and the reserve components thereof, hospitalized during periods of extended active duty, who continue as patients in United States Government hospitals to the date of their death . . .⁵⁵

The great many persons missing in action during the Korean War were honored by Congressional statute⁵⁶ in 1954 as amended in 1956 to read

That the Secretary of the Interior and the Secretary of the Army shall set aside, when available, suitable plots in the national cemeteries under their jurisdiction to honor the memory of members of the Armed Forces missing in action . . . or who died or were killed while serving in such forces, and whose remains have not been identified, have been buried at sea, or have been determined to be nonrecoverable.⁵⁷

When title 10 was revised in 1956 it included the list of ten items of burial expenses to be covered.⁵⁸

As with most revisions, it did not stand for long without further modification, this time to set forth the manner in which burial would be handled in the event of a common disaster involving multiple deaths, commingled remains, and burial in a common grave. Expenses would be paid for three persons to attend the interment of each individual buried.⁵⁹

Congress was reminded that the 1948 legislation on burial (62 Stat 1215) had not provided for markers for the remains of persons not recovered or not identified -- such as for those persons buried at sea.⁶⁰

Appropriate action to provide markers was taken in the new statute.⁶¹

The 1948 statute on headstones was again amended in 1958, but this time to include specific mention of the Guard and the reserves.

The Secretary of the Army is authorized and directed to furnish . . . headstones or markers . . . for the unmarked graves of

(4) Members of a reserve component of the Armed Forces of the United States, and members of the Army National Guard or the Air National Guard, whose death occurred under honorable conditions while they were --

(A) on active duty for training, or performing, full-time service under section 316, 503, 504, or 505 of title 32, United States Code;

(B) performing authorized travel to or from that duty or service;

(C) on authorized inactive duty training, including training performed as members of the Army National Guard or the Air National Guard; or

(D) hospitalized or undergoing treatment at the expense of the United States, for injury or disease contracted or incurred

under honorable conditions while they were--

- (i) on that duty or service;
- (ii) performing that travel or inactive duty training; or
- (iii) undergoing that hospitalization or treatment at the expense of the United States. 62

Also in 1958 came one of the periodic revisions to title 38, Veterans' Benefits, which further broadened entitlements.

The Administrator shall furnish a flag to drape the casket of each deceased veteran who --

- (1) was a veteran of any war;
- (2) had served at least one enlistment; or
- (3) had been discharged or released from active military; naval, or air service for a disability incurred or aggravated in line of duty.

. . . the Administrator, in his discretion having due regard to the circumstances in each case, may pay a sum not exceeding \$250 . . . to cover the burial and funeral expenses of the deceased veteran . . .

. . . The burial allowance or any part thereof shall not be paid in any case where specific provision is otherwise made for payment of expenses of funeral, transportation, and interment under any other Act. 63

Burial eligibility was next revised in 1959 to broaden eligibility to include members of Reserve Components. In a letter to President Nixon, the Deputy Secretary of Defense explained:

. . . . Since the death of (those Reservists) . . . occurs while the individuals are performing services of a military nature, it is believed that the burial of these individuals in a national cemetery is appropriate . . . 64

It was estimated that not more than 25 burials a year would be requested so Congress passed that amendment and eligibility requirements for burial in national cemeteries became:

- (1) Any member or former member . . .
- (2) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions

while he is -

- (a) on active duty for training, or performing full time services under . . . title 32 . . . ;
- (b) performing authorized travel to or from that duty or service;
- (c) on authorized inactive duty training including training performed as a member of the . . . Guard; or
- (d) hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while he is -
 - (i) on that duty or service;
 - (ii) performing that travel or inactive duty training; or
 - (iii) undergoing that hospitalization or treatment at the expense of the United States.
- (3) Any member of the Reserve Officers' Training Corps65

The House Report in support of the legislation pointed out the intent to give reserves the same benefit as members of the armed services who die in the service and former members whose last service terminated honorably. They indicated that there were 60 persons in this category in 1957 and estimated that headstones would be requested for fewer than half.⁶⁶

This act, in turn, was repealed by the National Cemeteries Act of 1973⁶⁷ that became the new chapter 24 in title 38.

That chapter, as it currently exists (October 1977), sets forth not only entitlement of reserves and National Guardsmen to eligibility for burial in national cemeteries, but also various special burial allowances for veterans.

Related legislative concern in the early '60's seemed to focus on eligibility and authority for transportation of remains. The granting of statehood to Alaska and then to Hawaii required some adjustment to the statutes to include transport to the continental United States.

In 1965, an amendment to section 1485 of title 10 authorized

The Secretary to . . . pay the necessary expenses of, transporting the remains of the deceased dependent (of a member of an armed force on active duty - other than for training) to the home of the decedent or to any other place . . . appropriate.⁶⁸

The effect to this was to "authorize essentially the same transportation for a dead dependent that would be authorized if the dependent were living." (The sponsor continued to be responsible for all other costs associated with dependent burial.) Congress learned that there were about 9,500 dependent deaths annually at a transportation cost estimated to be \$670,000. ⁶⁹

The Funeral Transportation and Living Expense Benefits Act of 1974 provided reimbursement of round trip travel costs for the family of any deceased Vietnam POW's and MIA's from their residence to the place of burial and living expenses for the trip. This applied in the case of remains returned to the United States after 27 January 1973. ⁷⁰

An act in 1976 provided for the Veterans Administration to absorb cost of transporting the remains of deceased disabled veterans to national cemeteries.

Such payment shall not exceed the cost of transportation to the national cemetery nearest the veteran's last place of residence in which burial space is available. ⁷¹

The Burial Flag

The first mention of a flag in the statutes occurred in 1924 in the World War Veterans' Act, but there's been much attention to it ever since.

For a flag to drape the casket, and after burial to be given to the next of kin of the deceased, a sum not exceeding \$5;...⁷²

Rising costs in the post-war period forced Congress to raise the price allowed for the flag to \$7.⁷³

President Roosevelt confirmed the use of a flag in one of his orders:

Where an honorably discharged veteran of any war dies after discharge, a flag to drape the casket shall be furnished in all cases; such flag to be given to the next of kin after burial of the veteran.⁷⁴

In 1939, the regulations on veterans' funerals were amended authorizing that a flag be used

to drape casket of honorably discharged veteran of any war, or a person honorably discharged . . . after serving at least one enlistment or for disability incurred in line of duty, dies after discharge . . .⁷⁵

During the Second World War, a statute

provided for issuance of a flag free of cost to nearest relative of any person who died in the military or naval service after May 27, 1941 and prior to end of the war.⁷⁶

The 1949 statute that revised and published the statutes in title 14, for the Coast Guard, established that upon death of a Coast Guardsman a flag would be issued

free to relatives or, upon request, to a school, patriotic order, or society of which the deceased was a member . . . ⁷⁷

Later, during the Korean war, a statute setting forth entitlement to medical and hospital care and burial benefits, was interpreted as to include a flag although there was no specific mention of one. ⁷⁸

In 1954, a new statute dealt systematically with the subject of recovery, care, and disposition of remains of members of the uniformed services (including the Guard, reserves, and Coast Guard) and covered the presentation

of a flag . . . to the person recognized as the one to direct the disposition of the remains, except that the presentation of the flag shall not be authorized in the case of a military prisoner who dies while in . . . custody and whose sentence includes a discharge other than honorable . . . ⁷⁹

The 1936 statute was amended in 1955 so that the flag on a veteran's casket might be given to a friend or associate if it were not claimed by the next of kin. ⁸⁰

Authority to issue the flag had apparently ended at the conclusion of the Korean War so Congress passed a statute in 1967 to amend section 901 of title 38

to provide flag to next of kin or to such other person

for death of any person who died while in active . . . service, after May 27, 1941

if such person not otherwise entitled under 1482(a) of title 10 . . .⁸¹

Previously, a flag could only be issued when remains were recovered, but that oversight was also remedied in this act.⁸²

Congress, during the Vietnam War, was pressed to make a flag available to the parents, at the funeral, and not just to the surviving spouse or next of kin as the law specified. The earlier proposal for a smaller flag was defeated because of what that would have construed for the role of parents.⁸³

The statute added paragraph (11) to section 1482 authorizing "presentation of a flag of equal size . . . to the parents."⁸⁴

Also during the Vietnam War, another statute permitted two flags to be issued

(e) When the remains of a decedent covered by section 1481 of this title, whose death occurs after January 1, 1961, are determined to be non-recoverable, the person who would have been

designated under subsection (c) to direct disposition of the remains if they had been recovered may be--

(1) presented with a flag of the United States; however, if the person designated by subsection (c) is other than a parent of the deceased member, a flag of equal size may also be presented to the parents, and

(2) reimbursed by the Secretary concerned for the necessary expenses of a memorial service.

However, the amount of the reimbursement shall be determined in the manner prescribed in subsection (b) for an interment, but may not be larger than that authorized when the United States provides the grave site. A claim for reimbursement under this subsection may be allowed only if it is presented within two years after the effective date of this subsection, or the date of death, whichever is later.⁸⁵

Even though reservists serving on active duty for 30 days or more are entitled to the same military funeral and burial benefits (including burial flag) as their regular counterparts, it was not until 1974 that an amendment to section 1482 of title 10 provided for presentation of a flag for deceased members of the Ready Reserve. That statute also authorized a flag in the case of reservists who die after completing 20 years of service but before becoming entitled to retired pay.⁸⁶

The Senate committee

agrees that such displays of reverence and affection increases the morale of the military and reminds the public of the service performed by the citizen soldier in their midst.

It was not known to what extent this entitlement would "duplicate . . . the entitlement now provided by section 901 of title 38 . . ." but it was estimated to cost no more than \$16,000 annually.

Estimated Annual Reserve Deaths and Flag Costs ⁸⁷

	<u>Officers</u>	<u>Enlisted</u>	<u>Annual Cost of Flags</u>
Army Guard	50	370	\$4675
Army Reserve	49	205	2825
Navy Reserve	2	153	2100
Marine Corps Reserve 1		29	400
Air Guard	30	242	3025
Air Force Reserve	<u>44</u>	<u>214</u>	<u>2875</u>
Total	176	1213	\$15,900

Summary

In summary, the 110 year legislative history of burial benefits results in these entitlements for reservists (as distinct, but not necessarily different or separate from the entitlements of active duty military personnel, retirees, or veterans).

Entitlement to Burial Expenses. The current wording in 1481 of title 10 USC for entitlement to burial expenses differs slightly for reservists and Guardsmen only in the introduction not in the four circumstances (i.e., (A), (B), (C), (D) below):

- | | |
|--|---|
| (2) Any reserve of an armed
force who dies while | (3) any member of the Army
National Guard or Air
National Guard who dies
while entitled to pay from
the United States and while |
| (A) on active duty, | |
| (B) performing authorized travel to or
from that duty, | |
| (C) on authorized inactive-duty training, or | |
| (D) hospitalized or undergoing treatment at
the expense of the United States for injury
incurred, or disease contracted, while on
that duty or training or while performing
that travel. ⁸⁸ | |

The actual expenses themselves are detailed in section 1482 but are summarized below:

- care and disposition of remains to include: pickup, embalming, preservation, and casket (or cremation and urn if requested in writing); transportation, including an escort, to the location of burial designated by next of kin;

- for the casket, a flag to be given the next of kin;
- military honors upon interment, if requested;
- a headstone or marker whether burial is in a national, post, or private cemetery;
- for burial in a private cemetery, reimbursement of costs not to exceed \$750;
- for dependents who die while the sponsor is on active duty (except active duty for training), only transportation from point of death to place of interment is covered at Government expense, all other costs are the sponsor's.⁸⁹

Entitlement to Interment in a National Cemetery. This element of the burial benefit is covered in section 1002 of title 38 for reservists as well as for active duty personnel and for veterans.

- (2) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while he is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while he is performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.⁹⁰

Entitlement of Ready Reservist to a Flag. Finally, subsection (1) of section 1482 of title 10 calls for a flag to be presented for a reservist or Guardsman who died while he

- (1) was a member of the Ready Reserve; or
- (2) had performed at least twenty years of satisfactory service but was not yet receiving retired pay.⁹¹

These, in summary, are the three burial benefits currently available to reservists.

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- 5 17 Stat 345 (1872); PL 42-Ch 368
- 6 17 Stat 545 (1873); PL 42-Ch 229
- 7 17 Stat 605 (1873); PL 42-Ch 276
- 8 19 Stat 99 (1876); PL 44-Ch 226
- 9 20 Stat 281 (1879); PL 45-Ch 44
- 10 25 Stat 538 (1888); PL 50-Ch 1069
- 11 26 Stat 401 (1890); PL 51-Ch 837
- 12 29 Stat 625 (1897); PL 54-Ch 378
- 13 33 Stat 495 (1904); PL 58-192
- 14 Ibid, p 496
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- 16 35 Stat 128 (1908); PL 60-115
- 17 35 Stat 735 (1909); PL 60-305
- 18 37 Stat 329 (1912); PL 62-290
- 19 36 Stat 1389 (1911); PL 61-525
- 20 39 Stat 588 (1916); PL 61-525
- 21 40 Stat 400 (1917); PL 65-90
- 22 Ibid, p 405

- 23 41 Stat 552 (1920); PL 66-175
24 43 Stat 617 (1924); PL 68-242
25 42 Stat 1509 (1923); PL 67-534
26 45 Stat 248 (1928); PL 70-109
27 45 Stat 251 (1928); PL 70-117
28 45 Stat 354 (1928); PL 70-181
29 45 Stat 1307 (1929); PL 70-810
30 45 Stat 767 (1928); PL 70-543
31 45 Stat 462 (1928); PL 70-318
32 47 Stat 419 (1932); PL 72-212
33 48 Stat 11 (1933); PL 73-2
34 Executive Order 6158; (1933), President Roosevelt
35 Executive Order 6567; (1934), President Roosevelt
36 49 Stat 2032 (1936); PL 74-844
37 52 Stat 398 (1938); PL 75-527
38 54 Stat 144 (1940); PL 76-465
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40 54 Stat 963 (1940); PL 76-796
41 60 Stat 654 (1946); PL 79-529
42 62 Stat 621 (1948); PL 80-759
43 72 Stat 624 (1958); PL 85-674
44 85 Stat 352 (1971); PL 92-129
45 1973 Congressional News, pp 1401-1434
46 Executive Order 6166; (1933), President Roosevelt

47 52 Stat 1233 (1938); PL 75-774
48 61 Stat 234 (1947); PL 80-148
49 61 Stat 742 (1947); PL 80-342
50 49 Stat 339 (1935); PL 74-132
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65 73 Stat 547 (1959); PL 86-260
66 1958 Congressional News p 4095
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68 79 Stat 585 (1965); PL 89-150
69 1965 Congressional News, p 2884
70 88 Stat 53 (1974); PL 93-257

- 71 90 Stat 1374 (1976); PL 94-433
- 72 43 Stat 617 (1924); PL 68-242
- 73 43 Stat 1305 (1925); PL 68-628
- 74 Executive Order 6158; (1933), President Roosevelt
- 75 53 Stat 999 (1939); PL 76-166
- 76 57 Stat 590 (1943); PL 78-187
- 77 63 Stat 537 (1949); PL 81-207
- 78 65 Stat 40 (1951); PL 82-28
- 79 68 Stat 507 (1954); PL 83-495
- 80 69 Stat 440 (1955); PL 84-210
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- 83 1970 Congressional News, p 3814
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- 86 88 Stat 176 (1974); PL 93-292
- 87 Table developed by the author from data in
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- 88 10 USC 1481 (a) (2) (3); (1976)
- 89 10 USC 1482; (1976)
- 90 38 USC 1002; (1976)
- 91 10 USC 1482 (f); (1976)

RCSS
Legislative History
13 January 1978

FICA COVERAGE OF RESERVISTS

Legislative Authority: 26 USC 3121 (i) (2), (m) (n) (1976 ed),
70 Stat 857 (1956); PL 84-881

Purpose: To determine the basis of coverage for reservists
under the Federal Insurance Contributions Act (FICA).

Background: In 1950, the Congress passed legislation¹ granting
a gratuitous social security wage credit retroactive to
September 16, 1940, to all members who served over 90 days in
the armed forces.² Irrespective of rank or grade, each active
duty serviceman was assumed to have an imputed salary of \$160
per month on which the social security credit was computed.
These credits would enable a serviceman to achieve the required
40 paid quarters to be eligible for social security retirement.

No contribution was required from the serviceman, nor were the
military departments required to reimburse the trust fund.
The Federal Government continued to renew this benefit annually
until 1956. At that time the Servicemen's and Veterans'
Survivor Benefits Act placed all servicemen on active duty under
FICA on a contributory basis.³ This coverage was for all
military duty regardless of the number of calendar quarters of
covered employment the individual had accumulated.⁴ The Act
also authorized funds to reimburse the Social Security Trust
Fund for previous credits given to the members of the Armed
Forces since 1940 (if they had served over 90 days active duty).⁵

Effective January 1, 1957, members of the uniformed services would be placed under the regular contributory OASI (Old Age and Survivor's Insurance) coverage while on active duty and active duty training.

The serviceman as employee would pay two percent, and the United States Government as employer would pay two percent.

The present \$160 gratuitous social security wage credit for military service would be discontinued after December 31, 1956, when contributory coverage would be effective.⁶

Therefore, all servicemen on any active duty from 1940 to 1956 would be entitled to receive social security benefits as any other covered employees. After 1956, Social Security retirement benefits would be given only when actual contributions were made by the individual and government.

Reserve inactive duty (drill) pay was not made subject to FICA payments. (Drill pay did not provide any credits for retirement, under Social Security.) A Defense Department memorandum reported this decision (without any explanation) from a meeting on February 2, 1956, at the Pentagon.⁷ The insignificance of the added cost to the Social Security Trust Fund is the only explanation given in any of the House and Senate reports for this bill. This one excerpt follows:

ALL RESERVISTS COVERED

It is the intention of the committee that this bill provide survivor benefits for all persons in the Armed Forces, both reservists and regulars

who are on active duty for training or inactive-duty training. Section 102 (2) provides this coverage. The committee knows of no component of the Armed Forces which is not covered under the provisions of this bill while on active duty, regardless of the period of time of such active duty. The Federal National Guard, members of the Reserve units who drill one night a week, serve on active duty one weekend per month, or who serve on active duty for a period of 14 days or more per annum are all covered under the terms of this bill.

The committee does not feel that by extending this broad coverage to Reserve personnel that any significant cost will be incurred.⁸

The last line of this quote can only refer to inactive duty pay, the only pay not subject to FICA payments. While no other reference had been given in the other House and Senate Reports, this issue was accidentally raised during the hearings on the 1956 legislation. The administrative burden of collecting a very small amount of money that may have to be returned to the serviceman as excess FICA contributions, was the explanation given for not requiring FICA deductions from drill pay. The excerpt from this hearing follows:

MR. HARDY (Chairman of House Select Committee on Survivor Benefits):
Whatever it is, they are covered under plan A, and the question that was bothering me was this: If you had a

contributory system, is that contribution going to be based only on the period of their actual training, based on the pay that they receive for this 1 night a week, or whatever it is, for 7 years - 7½ years?

How are you going to separate that from social security in private employment?

CAPTAIN HOYT (Defense Study Group):
Mr. Hardy, if I may answer that question?

The bill does not contemplate any social security deductions for these nightly drills at the armory, for instance.

MR. HARDY: Well, who is going to pay that?

CAPTAIN HOYT: Well, the reason for that is -

MR. HARDY: I think it would be silly if it did, but I want to know who is going to pay it?

CAPTAIN HOYT: Let me say this: The average one of the boys who is not in active service but is performing training at the armory is working in covered employment.

Now if he is working in covered employment, he is earning his social security there, and if his contributions from the military was in excess of the maximum he would get a refund on them, from the social security.

That is only refund you get from the Social Security System, is if your total contributions from multiple employers is greater than the maximum amount that you get.

So in general, because of the book-keeping and because many of the people that are drilling at the armories do not draw any pay of any sort in this country, we just had the consultation with the OASI people in Baltimore and decided for the people who were in training at armories it was not worthwhile collecting or going through the bookkeeping to collect one-thirtieth of a month's pay and 2 percent of that, which would all be pennies.

It would cost more to check.⁹

A reservist, at this time, is not credited for Social Security retirement for his drill pay. His active duty time, two weeks per year per year, is insufficient for most enlisted personnel to achieve the minimum \$250 per year to attain a qualifying quarter under the December 1977 amendments.¹⁰

The combination of computerized data processing, a higher percentage FICA payment, and a much higher level of wages subject to FICA payments perhaps implies that this rationale for not having drill pay subject to FICA contributions is no longer valid.

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- 2 101 Cong. Rec. 10441 (1955)
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- 4 HRpt 2718, 84th Cong., 2nd Sess., p 17 (1955)
- 5 70 Stat 875, 876 (1956); PL 84-881
- 6 102 Cong. Rec. 11567, 11568 (1956)
- 7 Inter-Service Committee for Coordinating Actions on
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- 10 91 Stat 1509 (1977); PL 95-216

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